[redacted]

(29,624)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 332

MISSOURI PACIFIC RAILROAD COMPANY AND ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, PLAINTIFFS IN ERROR,

vs.

WESTERN CRAWFORD ROAD IMPROVEMENT DISTRICT

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

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ol. 1] *Endorsement on Transcript*

WESTERN CRAWFORD ROAD IMPROVEMENT DISTRICT

vs.

MO. PAC. RAILROAD CO. et al.

Crawford chy. clerk, J. V. Bourland, ch., $11.50.
Transcript Filed Nov. 4, 1922.
W. P. Sadler, Clerk, By C. R. Stevenson, D. C.

An appeal to the Supreme Court is prayed by the appellants, estern Crawford Road Improvement District and its Commissioners rein named. November 2, 1922.
E. L. Matlock, Attorney for Appellants.

11-4-22. Appeal granted.
W. P. Sadler, Clerk, By C. R. Stevenson, D. C.

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ol. 2] In the Chancery Court of Crawford County

MISSOURI PACIFIC RAILROAD COMPANY et al., Plaintiffs,

vs.

WESTERN CRAWFORD ROAD IMPROVEMENT DISTRICT et al., Defendants.

eas Before the Honorable J. V. Bourland, Chancellor of the Crawford Chancery Court, on June 19, 1922, and Prior Thereto in the Above-entitled Cause, as Hereinafter Set Forth.

ol. 3] In the Matter of THE WESTERN CRAWFORD ROAD IMPROVEMENT DISTRICT OF CRAWFORD COUNTY

PETITION FOR TAX LEVY

Comes E. R. McRae, W. A. Steele, and R. S. Wilson, Commisners for the Western Crawford Road Improvement District, of awford County, Arkansas, and state to the Court:
That at the extraordinary session of the Legislature of the State Arkansas convened on the 26th day of January, 1920, an act of l legislature entitled "An Act Creating The Western Crawford ad Improvement District" was duly passed by said legislature and proved by the Governor of the State, for the purpose of building l improving certain public roads therein, bounded as follows:
Beginning at the Intersection of Broad Street with the Arkansas ver, in the City of Van Buren, in Crawford County, Arkansas,

and from this point running northeasterly along the center of Broad Street to the center of East Main Street in said city; thence east along the center of East Main Street to the center of 15th street in said city; thence north along the center of said 15th street to Poplar street, in said city, thence east along the center of Poplar street to 16th Street in said city; thence north to the northwest corner of Southeast Quarter of the northwest quarter of section 19, township 9 north, range 31 west; thence east to the dividing line between sections 19 and 20, township 9 north, range 31 west; thence north on said section line to the northwest corner of said section 20 thence east to the half-section line dividing said section 20; thence north to [fol. 4] the center of section 17, township 9 north, range 31 west, thence east to the center of section 16, township same and range; thence north to the north line of said section 16; thence east to the half section line dividing section 15, same township and range; thence east to the line between sections 11 and 12, thence north to the center of section 10, same township and range, thence north to Big Clear Creek sometimes called Frog Bayou; thence up the center of the channel of said creek to the north line of section 12, township 10 north, range 31 west; thence west on the section line to the northwest corner of section 10, same township and range; thence north on the section line to the Washington County line; thence west on the county line to the Oklahoma state line; thence south on the state line to the intersection of the half-section line dividing section 19, township 9 north, range 32 west, east and west, thence east on the half section line to the Arkansas River; thence down the north bank of the Arkansas River to the place of beginning, and naming them as Commissioners for said Improvement District.

That pursuant to the provisions of said act they took and subscribed the oath of office provided by the same and entered upon their duties as such Commissioners; that they employed civil engineers to make surveys, plans and estimates of the cost of constructing and improving the roads in said district mentioned in the said act; that they employed attorneys to do the legal work for the district; that they purchased such record books, stationery, etc., as was necessary in carrying on the work provided for by the said act; that they employed the necessary clerical help to inscribe the lands of the dis- [fol. 5] trict in a record book for the purpose of making the assessment of benefits contemplated by the act; that they elected three assessors, as provided by the act, to assess the benefits accruing to each tract of land, railroad, tramroad, telegraph, telephone, and pipe line, and other improvement on real estate to be benefitted by the improving of the roads.

That pursuant to their employment the said engineers made all the surveys, plans, and estimates of the cost of constructing and improving the public roads provided for in the district, which surveys, plans and estimates were approved by the State Highway Department and also by the Board of Commissioners, and the same were duly filed with the County Clerk of Crawford County, as provided for by the said act; that said attorneys approved the validity of the passage of the said act, prepared such papers and documents

and rendered all counsel and services to the Board of Commissioners as was necessary and required of them during the progress of the work of the district; that the clerical help employed prepared the assessment record, and such further work as was necessary and required of them by the Commissioners; that the said assessors for the district made the assessment of benefits as required by law, which assessment was duly filed with the County Clerk of Crawford County for inspection and notice of the same published, as required by said act, that on the 1st day of September, 1920, complaints against said assessment of benefits would be heard by said Board of Commissioners.

That during the progress of the work of organizing said Road Improvement work, as aforesaid, the Board of Improvement incurred on [fol. 6] behalf of the district the following expenses, to wit:

Engineering fees, Pritchett & Fry	$17,443.84
E. L. Matlock, Attorney fee	1,000.00
Geo. B. Rose, " "	400.00
Van Buren Press Argus, for printing	82.00
Arkansas Gazette " "	96.00
Southern Construction News "	54.10
St. Louis Post Dispatch "	111.30
Rains Abstract Co. for making assessment book	400.00
E. R. McRae, per diem and expenses as Commissioner	87.50
R. S. Wilson, Per diem and expenses as commissioner	52.10
W. A. Steele, per diem and expenses as commissioner	50.00
S. U. Byrum, Assessor	77.00
A. W. Hays, Assessor	77.00
W. A. Bostick, Assessor	115.00
Calvert-McBride Printing Co., for records	59.50
E. L. Matlock, expenses incurred for district	44.90
Interest on borrowed money	932.20
Interest on borrowed money	140.66
Total	$21,223.00

That on the 1st day of September, 1920, the day set by the Commissioners for hearing complaints against the assessment of benefits. such strong opposition to the construction of the roads developed among the land owners in the district and a large number of them gathered at the place appointed for the hearing and so urgently demanded of the commissioners that the roads be not built, that the Board of Commissioners decided to not build the roads and to ask for a tax levy sufficient to pay the preliminary expenses of the district, as provided by said act, and to wind up the business of the district.

That section 25, of the act creating the district, reads as follows:

"In case, for any reason, the improvement contemplated by this district is not made, the preliminary expenses shall be a first lien upon all the land in the district, and shall be paid by a levy of a [fol. 7] tax thereon upon the assessed value for County and State

taxation, which levy shall be made by the chancery court of Crawford County, and shall be collected by a receiver to be appointed by said Court."

That the total assessed valuation of all the lands, railroads, tramroads, telegraph, telephone, and pipe lines, and other improvements on real estate in the said district, as shown by the last county assessor's assessment of the same, aggregates the sum of $1,453,938.00.

That section 12 of said act, fixed the compensation of the collector for the district at one per cent of the sums collected for his services in making such collection; and the Tax Collector for Crawford County is thereby made the collector of such taxes; that to the above mentioned preliminary expenses it will be necessary to add the collector's commission, which it is estimated will amount to $212.00.

That it is estimated by the Board of Commissioners that the deliquencies in the payment of a tax levy in the district will amount to ten per cent of the taxes levied, and that such delinquencies should be taken into consideration in making a tax levy to cover said preliminary expenses and a sum added to cover the same; and that it is estimated by the said Board of Improvement that a tax levy of 1.65 per cent of the total assessed valuation of the property in the district subject to such levy will pay the said preliminary expenses, and cost of collecting the tax, and the per centage of delinquencies in the district.

That each and all of the above mentioned items of preliminary [fol. 8] expenses of the district have been audited by the Board of Commissioners and found to be correct and according to contract and have been ordered paid by the district.

Wherefore, the Board of Commissioners, for said Road Improvement District pray the court to make a tax levy of 1.65 per cent of the assessed value of the property in the said district subject to taxation for the purpose of paying the said preliminary expenses of the district, as above set forth, and to pay the cost of collecting the same, and to cover the percentage of taxes which cannot be collected; and that the Tax Collector of Crawford County be appointed receiver to collect the said tax levy at the time he collects the State and County general taxes for the year 1920, and that he be required to account for and turn over to the proper officer of the said Road Improvement District said taxes when so collected; and that petitioners have such further relief as they may appear to be entitled under this petition.

E. R. McRae, W. A. Steele, R. S. Wilson, Commissioners, By E. L. Matlock, Their Attorney.

[fol. 9] IN CHANCERY COURT OF CRAWFORD COUNTY

No. 1215

In the Matter of THE WESTERN CRAWFORD ROAD IMPROVEMENT DISTRICT OF CRAWFORD COUNTY

DECREE FOR TAX LEVY

Now on this 3rd day of November, 1920, come on to be heard the petition of E. R. McRae, W. A. Steele, and R. S. Wilson, Commissioners for the Western Crawford Road Improvement District, praying the court to levy a tax upon the property subject to taxation in the district to pay the preliminary expenses of the district, and come the said petitioners by their attorney, E. L. Matlock, and announced ready to present the petition.

And the court *foth* find from the evidence that, at the extraordinary session of the Legislature of the State of Arkansas convened on the 26th day of January, 1920, an act of said Legislature entitled "An Act Creating The Western Crawford Road Improvement District" was duly passed by said Legislature and approved by the Governor of the State, bounded as follows:

Beginning at the intersection of Broad Street with the Arkansas River, in the City of Van Buren, in Crawford County, Arkansas, and from this point running northeasterly along the center of Broad Street to the center of East Main Street in said city; thence east along the center of East Main Street to the center of 15th street in said city; thence north along the center of said 15th street to Poplar street, in said city, thence east along the center of Poplar Street to 16th street in said city; thence north to the northwest corner of southeast quarter of the northwest quarter of section 19, township 9 north, range 31 west; thence east to the dividing line between sections 19 and 20, township 9 north, range 31 west; thence north on said section line to the northwest corner of said section 20 thence [fol. 10] east to the half-section line dividing said section 20; thence north to the center of section 17, township 9 north, range 31 west, thence east to the center of section 16, same township and range; thence north to the north line of said section 16; thence east to the half-section line dividing section 15, same township and range; thence north to the center of section 10, same township and range; thence east to the line between secions 11 and 12, same township and range, thence north to Big Clear Creek (sometimes called Frog Bayo); thence up to the center of the channel of said creek to the north line of section 12, township 10 north, range 31 west; thence west on the section line to the northwest corner of section 10, same township and range; thence north on the section line to the Washington County line; thence west on the county line to the Oklahoma State line; thence south on the State line to the intersection of the half-section line dividing section 19, township 9 north, range 32 west, east and west, thence east on the half section line to the Arkansas River; thence down the north bank of the Arkansas River

to the place of beginning, for the purpose of constructing and im
proving certain public roads therein mentioned.

And the Court further finds that, pursuant to the provisions o
said act said Commissioners qualified, organized their board, and en
tered upon the discharge of their duties as such commissioners
that they employed civil engineers to make surveys, plans and est
mates of the cost of constructing and improving the roads in sai
district mentioned in the said act; that they employed attorneys t
do the legal work for the district; that they purchased such recor
books, stationery, etc., as was necessary in carrying on the work pr
[fol. 11] vided for by the said act; that they employed the necessar
clerical help to inscribe the lands of the district in a record boo
for the purpose of making the assessment of benefits contemplate
by the act; that they elected three asssessors, as provided by the ac
to assess the benefits accruing to each tract of land, railroad, tram
road, telegraph, telephone, and pipe line, and other improvement
on real estate to be benefited by the improving of the roads.

That pursuant to their employment the said civil engineers mad
all surveys, plans and estimates of the cost of constructing and im
proving the public roads provided for in the district, which survey
plans and estimates were approved by the State Highway Depar
ment and by the Board of Commissioners for the District, and th
same were duly filed with the County Clerk of Crawford County, a
provided for by the act; that said attorneys approved the validity o
the said act and of the passage of the same, and prepared such paper
documents and rendered all counsel and services to the Board o
Commissioners as was necessary and required of them during th
progress of the work of the district; that the clerical help employe
prepared the assessment record, and such further work as was nece
sary and required of them by the commissioners; that the assesso
for the district made the assessment of benefits as required by law
which assessment was duly filed with the county clerk of Crawfor
County for inspection and notice of the same was published, as re
quired by said act, that on September 1st, 1920, complaints again
said assessments of benefits would be heard by said Board of Com
missioners.

[fol. 12] And the Court further finds that, all of the things don
the contract made, and the materials and supplies purchased an
provided therefor by the Board of Commissioners was preliminar
to and necessary in constructing and improving the public roads i
the district contemplated by said act was legal and within the con
templation of the act; and that the said total preliminary expens
so incurred by the said commissioners aggregate the sum of $21
223.00 and that all of said preliminary expenses of said district ha
been duly audited and the contract and bills therefor duly allowe
by the said Board of Commissioners for the said district, as show
by the petition filed herein.

That section 25, of the act creating the said district, provides tha
"In case, for any reason, the improvements contemplated by th
district is not made, the preliminary expense shall be a first lien upo
all the land in the district, and shall be paid by a levy of tax ther

upon the assessed value for County and State taxation, which levy shall be made by the chancery court of Crawford County, and shall be collected by a receiver to be appointed by said court."

And the court further finds that, at the hearing of complaints against the assessment of the benefits against the property in the district subject to taxation held on the 1st day of September, 1920, such strong and urgent objection to the constructing and improving of roads in the district contemplated by the act and the Board of Commissioners arose upon the part of the property owners in the district and upon their urgent demand the said Board of Commissioners decided to not construct or improve the roads contemplated and to wind up the business of the district and to ask the Chancery Court [fol. 13] to make a tax levy sufficient to pay the preliminary expenses already incurred by them in the district; which action of the Board of Commissioners the court finds to be in conformity with the law.

And the court finds that the total assessed valuation of all the land, railroads, tramroads, telegraph, telephone, and pipe lines, and other improvements on real estate in the district, as shown by the last county assessor's assessment of the same, aggregates the sum of $1,453,938.00; that in order to cover the amount of said preliminary expenses, cost of collecting the taxes levied to pay the preliminary expenses, cost of collecting the taxes levied to pay the same, and the losses of such taxes by reason of lands forfeiting to the State for non-payment of state and county general taxes, it will be necessary to make a tax levy of 1.65 per cent of the assessed value of the property in the district subject to taxation for such preliminary expenses, as shown by the last county assessment of the same.

It is therefore by the Court considered, ordered, adjudged and decreed, that, a tax levy of 1.65 per cent on the assessed value of all the lands, railroads, tramroads, telegraph, telephone, and pipe lines, and other improvements on real estate situated within the boundaries of The Western Crawford Road Improvement District, as shown by the last county assessor's valuation of the same, be and the same is hereby made for the purpose of paying the preliminary expenses of the district already incurred and necessary to wind up the business of the district as herein set forth, and that said taxes are hereby ordered extended and collected upon said basis and the same is [fol. 14] hereby declared to be a first lien upon all the property in the district subject to taxation for constructing and improving the roads therein contemplated by the act and by the board of commissioners for the district.

C. M. Bledsoe, Tax Collector of Crawford County, is hereby appointed receiver for said Western Crawford Road Improvement District to collect said taxes hereby levied to pay its preliminary expense, and he is ordered to collect said taxes at the same time he is collecting taxes for State and County general purposes and to turn the taxes when so collected over to the Board of Commissioners for said district, taking proper receipt therefor; and to report his acts under this appointment to the Court.

[fol. 15] IN THE CRAWFORD CHANCERY COURT

[Title omitted]

COMPLAINT IN EQUITY

Comes the Missouri Pacific Railroad Company and St. Louis-San Francisco Ry. Co. and for their cause for relief against the defendants, states:

1. That the plaintiffs are corporations organized under the laws of the State of Missouri, and are engaged in operating separate lines of railroad, in and through the State of Arkansas and owns land in said district hereafter mentioned.

2. That the defendant, West Crawford Road Improvement District is a corporation created by an act of the Legislature of the State of Arkansas at the extraordinary session thereof, which convened on the 26th day of January, 1920; that the defendants, E. R. McRae, W. A. Steel and R. S. Wilson are commissioners for said district; that the defendant, C. M. Bledsoe is the duly elected, qualified and acting tax collector of Crawford County.

3. That the said defendant commissioners organized as provided by section 2 of said act of the legislature, and in conformity with the provisions of sections 3 and 4 of said act they prepared plans for the [fol. 16] improving of the road designated in said act.

That section 5 of said act provided that the said Board of Commissioners shall appoint a board of three assessors, who shall be land owners of Crawford County, and who "shall proceed to assess the lands within the District, and shall inscribe in a book each tract of land and shall assess the value of the benefits to accrue to each tract by reason of such improvement, and shall enter such assessment of benefits opposite the description, together with the estimate of the probable cost to the land owner. Their assessments shall embrace not merely the lands, but all railroads, tramroads, telegraph, telephone, pipe lines and other improvements on real estate that will be benefited by the improving of the road." That in pursuance to said authority, said Commissioners appointed W. A. Bostick, A. W. Hays and S. U. Bryan as assessors, and that said assessors thereafter qualified and proceeded to make the assessment of benefits to accrue to the property of said plaintiffs at $350.00 per mile, and that the total amount assessed against the Missouri Pacific Railroad Company was $1,900.00, and the total amount assessed against the St. Louis-San Francisco Railway was $2,341.50.

4. That said commissioners thereafter filed in this court what it termed "petition for tax levy," which alleges the creation of the West Crawford Road Improvement District by an act of the legislature at its extraordinary session in January, 1920, and further alleges that pursuant to the provisions of said act, they took and subscribed the oath of office provided by same and entered upon their duties as such commissioners; that they employed civil engineers to make sur- [fol. 17] veys, plans and estimates of the cost of constructing and improving the roads in said district mentioned in the said act; that

they employed attorneys to do the legal work for the district; that they purchased such record books, stationery, etc., as was necessary in carrying on the work provided for by the said act; that they employed the necessary clerical help to inscribe the lands of the district in a record book for the purpose of making the assessment of benefits contemplated by the act; that they elected three assessors, as provided by the act, to assess the benefits accruing to each tract of land, railroad, tramroad, telegraph, telephone, and pipe line, and other improvement on real estate to be benefited by the improving of the roads.

That pursuant to their employment the said engineers made all the surveys, plans and estimates of the cost of constructing and improving the public roads provided for in the district, which surveys, plans and estimates were approved by the State Highway Department and by the Board of Commissioners, and the same were filed with the county clerk of Crawford County, as provided for by the said act; that the said attorney approved the validity of the passage of the said act, prepared such papers and documents and rendered all counsel and services to the Board of Commissioners as was necessary and required of them during the progress of the work of the district; that the clerical help employed prepared the assessment record, and such further work as was necessary and required of them by the commissioners; that the said assessors for the district made the assessment of benefits as required by law, which assessment was duly filed with the county clerk of Crawford County for inspection and [fol. 18] notice of the same published, as required by said act, that on the 1st day of September, 1920, complaints against said assessment of benefits would be heard by said Board of Commissioners.

That during the progress of the work of organizing said Road Improvement work, as aforesaid, the Board of Improvement incurred on behalf of the district the following expenses, to wit:

Engineering fees, Pritchett & Fry	$17,443.84
E. L. Matlock, attorney fee	1,000.00
Geo. B. Rose " "	400.00
Van Buren Press Argus, for printing	82.00
Arkansas Gazette, " "	96.00
Southern Construction News "	54.10
St. Louis Post Dispatch " "	111.30
Rains Abstract Co. for making assessment book	400.00
E. R. McRae, per diem and expenses as Commissioner	87.50
R. S. Wilson, per diem and expenses as Commissioner	52.10
W. A. Steele, per diem and expenses as Commissioner	50.00
S. U. Byrum, Assessor	77.00
A. W. Hays, Assessor	77.00
W. A. Bostick, Assessor	115.00
Calvert-McBride Printing Co., for records	59.50
E. L. Matlock, expenses incurred for district	44.90
Interest on borrowed money	932.20
Interest on borrowed money	140.66
Total	$21,223.00

That on the 1st day of September, 1920, the day set by the commissioners for hearing complaints against the assessment of benefits such strong opposition to the construction of the roads developed among the land owners in the district and a large number of them gathered at the place appointed for the hearing and so urgently demanded of the commissioners that the roads be not built, that the Board of Commissioners decided to not build the roads and to ask for a tax levy sufficient to pay the preliminary expenses of the district, as provided by said act, and to wind up the business of the district.

[fol. 19] That section *q5* of the act creating the district, reads as follows:

"In case, for any reason, the improvement contemplated by this district is not made, the preliminary expense shall be a first lien upon all the land in the district, and shall be paid by a levy of a tax thereon upon the assessed value for county and State taxation, which levy shall be made by the chancery court of Crawford County, and shall be collected by a receiver to be appointed by said court."

And in the concluding paragraph of such petition they prayed an order of this court "to make a tax levy of 1.65 per cent of the assessed value of the property in the said district subject to taxation for the purpose of paying the said preliminary expenses of the district, as above set forth, and to pay the cost of collecting the same, and to cover the percentage of taxes which cannot be collected; and that the tax collector of Crawford County be appointed receiver to collect the said tax levy at the time he collects the State and County General taxes for the year 1920, and that he be required to account for and turn over to the proper officer of the said Road Improvement District said taxes when so collected."

That this court, on the 3rd day of November, 1920, entered a decree granting the prayer of said petition and levying said tax as therein prayed for, the said decree reciting all of the facts alleged in said petition.

Plaintiffs further allege that said decree is void for the following reasons:

First. That it creates a lien upon the property of these plaintiffs [fol. 20] together with that of the other tax payers in said Road Improvement District.

Second. That said decree is in the nature of a judgment in rem against their property.

Third. That these plaintiffs together with the other tax payers in said district, had no notice that such a petition would be filed in this court, and had no knowledge that such a decree had been entered until long after adjournment of the November term of this court.

Fourth. That said decree is in violation of section 6238 of Crawford & Moses' Digest of the statutes of Arkansas, 1921, which provides:

"Sec. 6238. Judgment without notice. All judgments, orders, sentences and decrees made, rendered or pronounced by any of the courts of the states against any one without notice, actual or constructive, and all proceedings had under such judgments, orders, sentences or decrees, shall be absolutely null and void."

Fifth. That the said section 25 of said act creating said Road Improvement District, which provides, "In case, for any reason, the improvement contemplated by this district is not made, the preliminary expense shall be a first lien upon all the land in the district, and shall be paid by a levy of a tax thereon upon the assessed value for county and state taxation, which levy shall be made by the chancery court of Crawford County, and shall be collected by a receiver to be appointed by said court," is unconstitutional and void.

[fol. 21] Sixth. That the chancery court, under the constitution has no jurisdiction to levy a tax; that this court is only vested with jurisdiction in matters of equity.

Seventh. That the said section of the act is further void, unconstitutional, and in violation of section 1, article 14 of the Fourteenth Amendment to the Constitution of the United States, which provides:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the law."

And also with section 5, article 16 of the Constitution of the State of Arkansas, which provides:

"All property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the state. No one species of property from which tax may be collected shall be taxed higher than another species of property of equal value."

Eighth. That said section 25 of the act provides: "That the preliminary expense shall be a first lien upon all the land in the District," without regard to any possible benefits that might have accrued to such land if said road had been improved or constructed under the terms and provisions of said act of the Legislature; that under said provision, in numerous instances property will be charged with a lien to cover preliminary expenses far greater than the lien [fol. 22] would have been if the entire road had been constructed or improved.

Ninth. That the so-called preliminary expenses as shown in the petition filed herein by the petitioners and also as shown in the decree rendered upon said petition in this court, consist of charges made by certain firms and parties that are exorbitant and which

should not constitute a lien against the property of the petitioner and the other tax payers in said Road Improvement District.

The premises considered, plaintiffs pray that said decree be set aside and held for naught, and that a receiver be appointed by this court to wind up the affairs of the district; and that all creditors of said Road Improvement District be required within a limited time to file their claims with said receiver, and that upon a final hearing so much of said claims as are by this court found to be unjust be disallowed, and for all other and proper relief to which the plaintiffs in equity and good conscience may be entitled.

Thos. B. Pryor, Attorney for Plaintiffs. Warner, Hardin & Warner, Attorneys for St. Louis-San Francisco Ry. Co.

STATE OF ARKANSAS,
County of Sebastian, ss:

Thos. B. Pryor on oath states that he is general Attorney for the above named plaintiff, Missouri Pacific Railroad Company, and that the allegations in the foregoing complaint are true to the best of his knowledge and belief.

Thos. B. Pryor.

Subscribed and sworn to before me this 2nd day of May, 1921. W. F. Fennessey, Notary Public. My commission expires Jan. 12, 1924. (Seal.)

[fol. 23] [Title omitted]

On this day the motion of Dr. Giles Lucas and others named in the motion praying in the order of the Court that they be made parties plaintiff in this cause, is filed.

[fol. 24] IN THE CRAWFORD CHANCERY COURT

G. LUCAS, H. F. MEYER, F. J. LINCK, Jo HUFF, H. M. OLIVER, F. Brinkman, O. M. Oliver, J. L. Morland, R. C. Oliver, C. L. Massey, W. E. Neal, Dill Neal, V. R. Maxey, I. J. Cavens, C. Scott, A. S. Maxey, John Maxey, J. L. Evans, John O. Holt, R. M. Batchlor, I. P. Brewer, W. S. Cason, C. E. Rogers, C. M. Basham, N. A. Summers, G. C. Payne, T. M. Smith, Ben Jesler, T. B. Smith, P. C. Smith, M. S. Martin, Omer McMaster, L. F. Bell, J. B. Cason, C. A. Neal, T. Snowlin, F. C. Gray, I. W. Shafer, Ray Neal, P. Simon, Ralph, Swinburn, G. W. Gant, Sam McKnight, V. E. Watkins, W. H. Wilson, P. H. Woolbright, Arthur Sykes, T. A. Hammell, S. D. Raley, J. L. Jenkins, Calvin Smith, C. T. McCue, C. E. Smith, A. Sipple, Josie Thompson, Henry Thompson, Jesse Gilbert, H. C. Cox, J. F. Lynn, J. A. Shotwell, A. W. J. Webb, W. H. Cox, N.

Phillips, W. F. Egan, S. P. Hodges, Chas. I. Brown, J. H. Matlock, Mrs. V. S. Vestal, H. C. Bourne, H. J. Basham, S. A. Cox, Mary Hodges, W. H. Hodges, A. E. Tidd, J. S. Brown, Sarah Brown, W. A. Fears, R. L. Palmer, O. W. Osgood, W. M. Moore, H. A. Patterson, C. W. McKinnon, H. H. Euler, J. R. Snow, F. M. Snow, S. P. Snow, Z. T. Hodges, M. L. Garrett, J. P. Stewart, S. T. Matlock, J. S. Blake, J. M. Bradley, W. H. Killgore, S. W. Haines, B. F. Webb, S. A. Bushong, W. F. Morrison, M. Farrow, Matt Schaible, W. H. Early, E. A. Worsand, John Embry, Albert Gooding, J. R. Johnston, J. M. McBride, J. H. Briley, J. A. Watkins, Jesse McIntre, Dora West, J. R. Carney, C. C. Waters, Lucy Graham, R. S. Sangster, J. S. Watkins, J. W. Hall, H. C. Armstrong, D. H. Smart, J. H. Alvy, B. V. Danner, W. R. Stephenson, Wm. Howard, D. Burchful, P. J. Minks, J. W. Widner, J. M. Widener, Mrs. M. Helvey, Oscar Brewer, E. Hanner, O. Gulley, Wm. Gulley, W. E. Bates, P. C. Small, W. L. Elim, Guy Merton, M. Morton, E. E. Cook, S. Y. Smith, N. Roden, C. R. Parson, G. W. Jones, J. W. Viles, H. C. Tidwell, T. B. Soden, Ed Lynn, G. K. Sagely, J. A. Thomas, Mrs. M. J. Stamps, G. L. Stamps, A. Stamps, H. B. Symonds, Alix Hall, J. O. Suggs. Ben Graham, Mrs. M. B. Smith, E. Leigh, Home Lumber Co., O. W. Williams, Mrs. J. H. Bradley, J. E. Blakemere, W. H. Foster, C. C. Neal, J. F. Roberts, W. L. Gullett, C. R. Gullett, J. D. Hays, C. H. Willhaf, W. Thurman, Thos. Palmer, B. D. Reanney, G. W. Mitchell, J. C. Hardgrave, M. H. Ballestro, L. R. Cutbirth, L. H. Byrne, F. Hodges, Claud Loyd, A. Yound, C. J. Addis, A. A. Franklin, R. E. Mhoon, C. A. Nathwing, J. M. Greathouse, E. R. Koontz, J. P. Brown, J. S. Kenney, C. M. Simmons, E. Bailey, S. M. Johnson, R. C. Myers, H. Dolan, S. J. Kirkes. W. H. Hayes, H. P. King, E. L. McGlothlin, R. M. Pegram, J. M. Scott, N. E. Bixby, J. B. Vinsant, T. W. Davis, J. E. Motley, W. R. Willis, W. C. Irvin, J. M. Comstock, Noble Bowlin, Rufus Matlock, A. T. Gross. A. N. Kenney, H. L. Farrow, W. F. Boatright, W. Riggs, G. W. Campbell, L. E. McKinney, I. A. Campbell, J. D. Whittlessey, S. G. Hanning, M. Jack, W. L. Cottrell, H. Ellis, John Marvin. M. P. Phillips, W. T. St Clair, C. W. McClure, D. B. Berg, F. James, W. M. Flanary, W. E. Boroughs, R. T. Wood. J. D. McCallum, J. W. Smith, Joe Green, T. W. Shipley, R. T. O'Bryan, E. T. Mann, J. D. Burton, Tom Meek, J. J. Duffy, Nick Verfuth, H. G. Johnson, Roy Craig, A. B. Smith, G. D. Holts, J. Evans, R. J. Godfrey, C. E. Gage, C. G. Watkins, J. H. Thurman, G. D. Holts, J. Evans, O. W. Brown, W. J. Martin, Mrs. W. W. Ocker, J .W. Kins, John Steward, Sophie Ward, W. T. Lloyd, J. H. Mayfield, Wm. Braswell, C. A. Pape, B. H. Hatler, L. A. Haigler, G. G. Alexander, J. A. Yound, J. E. Kimes, G. K. Sagly, H. C. Faber, Dudley Bourne, H. G. Wofford, R. M. Maxey, [fol. 25] J. M. Cox, J. L. Ramey, J. A. Bond, T. B. Swearingen, E. D. Gann, G. E. Swearingen, J. E. Ramey, J. H. White, D. P. Cox, E. B. Ramey, H. S. Ramey, L. E Swearingen, A. L. Binnell, H. C. Wood, H. Comstock, J. A. Parker, W. Haygard, J. J. Bias, J. O. Byrum, G. W. Howell, T. C. Peace, S. U. Byrum, Dr. J. D.

Mitchell, M. L. Snow, J. C. Breeden and St Louis and San Fra
cisco Railroad, Plaintiffs,

vs.

Western Crawford Road Improvement District, E. R. McRa
W. A. Steele, and R. S. Wilson, Commissioners, and C. M. Bledso
Tax Collector of Crawford County, Defendants.

Motion to Be Made Parties—Filed June 20, 1921

Come the above named plaintiffs and represent to the Court th
they are owners, each of them, of lands and real property situat
within the above named road improvement district, to wit: Weste
Road Improvement District of Crawford County, Arkansas, and th
their said lands have been charged in some way unknown to the
plaintiffs, including other lands and real property in said distri
with the enormous sum of more than $21,000 for preliminary su
veys, attorneys' fees, interest, etc., without the consent of these plai
tiffs and without the knowledge thereof by many of them. Ar
plaintiffs have the further information that a decree has been entere
in this Honorable Court, without the knowledge of plaintiffs or ar
of them and without a day in court or opportunity to be heard, bin
ing and creating a lien against their several property aforesaid, f
the payment of the said sum of money. And the said decree is
record at page 614 of Chancery Record "H" of Crawford Count
Wherefore all of the plaintiffs herein move this Honorable Cou
for an order permitting said plaintiffs and all of them to be joined
party plaintiffs in the cause herein pending wherein The Missou
[fol. 26] Pacific Railroad Company is plaintiff and all of the abo
named defendants are defendants, and that we be allowed under suc
order to adopt such parts and allegations of the complaint of sa
railroad company as are applicable to our attitude herein, that sa
decree may be canceled, set aside and held for naught, and that eac
and all of the said defendants may be restrained and enjoined fro
enforcing said decree and from collecting or attempting the colle
tion of said sum of money or any other amount as so claimed in sa
decree, and for all equitable relief.

Dr. Giles Lucas, H. F. Meyer, F. J. Linck, Jo J. Huff, et a
Plaintiffs, By E. D. Chastain, Their Solicitor.

[File endorsement omitted.]

[fol. 27] In the Chancery Court of Crawford County

[Title omitted]

Demurrer—Filed Sept. 19, 1921

Now comes the defendants, Western Crawford Road Improveme
District, and E. R. McRae, W. A. Steele, and R. S. Wilson, Commi

sioners, and C. M. Bledsoe, Tax Collector of Crawford County, and demurs to the complaint of the plaintiffs herein and for grounds say:

That said complaint, consisting of nine paragraphs, does not as a whole state facts sufficient to constitute a cause of action against the defendants, or either of them.

That no single paragraph in the complaint of the plaintiffs states facts sufficient to constitute a cause of action against the defendants, or either of them.

Wherefore, defendants pray that plaintiffs' complaint be by the court dismissed for insufficiency, and that defendants be not required to answer or defend the same.

E. L. Matlock, Attorney for Defendants.

[File endorsement omitted.]

[fol. 28] In Chancery Court of Crawford County

[Title omitted]

Order Sustaining Demurrer in Part and Overruling in Part

Now on this 19th day of September, 1921, this cause come on to be heard upon the defendants' demurrer to the plaintiffs' complaint, and come the plaintiffs in person and by their attorney, Thos. B. Pryor, and the defendants by their attorney, E. L. Matlock, and all parties announced ready to submit the demurrer, whereupon the court proceeded to hear the same.

And the Court, after hearing the demurrer and the argument of counsel and being well and sufficiently advised in the premises, doth sustain the demurrer as to the ninth paragraph of the complaint and plaintiffs were granted leave to amend the same so as to set forth the facts to show that the preliminary expenses of the Road District as itemized are exorbitant, as alleged by plaintiffs in a general allegation.

And the court overruled the defendants' demurrer in every other respect. To which action of the court in overruling their demurrer the defendants at the time excepted and had their exceptions noted of record.

[fol. 29] IN THE CRAWFORD CHANCERY COURT

No. 1297

[Title omitted]

AMENDMENT TO PARAGRAPH NINE OF ORIGINAL COMPLAINT

Come the plaintiffs and allege:

1. That the fees and charges made against the said district and the tax payers thereof by and for the engineers, Pritchett & Fry, to wit, $17,443.84, is excessive, exorbitant and unjust because the amount so charged was not earned by said engineers nor either of them; and said services were not of real value to the said district.

2. That the attorney's fees so charged against the said district by and for E. L. Matlock in the sum of $1,000.00 and Geo. B. Rose in the sum of $400.00 are each exorbitant, excessive and unjust because they were not earned by the said attorneys nor either of them and because said services if any were of no real value or any value to the said district;

3. That the item charged against said district by and for said Van Buren Press-Argus for printing being the sum of $82.00 is also exorbitant, excessive and unjust, said item not being earned by said Van Buren Press-Argus, and said item was of no real value to said district and was of no value to said district at all;

4. That item charged to said district for any be the Arkansas Gazette for printing, the sum thereof being $96.00 is excessive, exor-
[fol. 30] bitant and unjust and the same is of no value to the said district.

5. That the item charged against the said district for and by Southern Construction News for printing, the said amount being $54.10 is also excessive, exorbitant and unjust, and not earned by said company, and has never been, is not now and never will be of any value to said road district;

6. That the item charged against said district by and for St. Louis Post Dispatch for printing being the sum of $111.30 is also exorbitant, excessive and unjust, not earned by said company and is of no value whatever to said district;

7. That the item charged against the said district by and for Rains Abstract Co. for making assessment books, the said amount being $400.00 is excessive, exorbitant and unjust, of no value to the said district and was not earned by said company;

8. That the item charged against the said district by and for E. R. McRae as one of the commissioners of the said district being the sum of $87.50 is also excessive, exorbitant and unjust as well of

no value to the said district, neither was said sum earned by him therein;

9. That the item charged against the said district by and for R. S. Wilson as commissioner of said district, the amount being $52.10, is also excessive, exorbitant and unjust, and unearned by him, as well the same is of no value to said district;

10. That the item charged against the said district by and for [fol. 31] W. A. Steele, Commissioner, being the sum of $50.00, is also excessive, exorbitant, and unjust and unearned, the same being of no value to the said district or to the taxpayers of said district;

11. That the item charged against the said district by and for S. U. Byrum for services as assessor in said district the sum being $77.00 is exorbitant, excessive and unjust, not earned by him and of no value whatever, to the said district;

12. That the amount charged against the said district by and for A. W. Hayes for the work of assessing the property of said district being the amount of $77.00, is also excessive, exorbitant and unjust, not earned by him and of no value to the said district or the taxpayers thereof;

13. That the item charged against the said district by and for W. A. Bostick for assessing the property of said district, sum being $115.00, is also excessive, exorbitant and unjust, of no value to the said district, and the same was not earned by him;

14. The item charged against the said district by Calvert-McBride Printing Co. for books, the amount being $59.50 is also excessive, exorbitant, unjust and unearned, is of no value to the said district or to the tax payers thereof.

15. That the item of expense charged to the said district by and for E. L. Matlock is also exorbitant, excessive, unjust and not paid out for the use and benefit of said district and is of no value to it, or to the tax payers thereof. It is also an illegal charge $44.90.

16. That the item charged against the said district claimed "Interest paid on borrowed money," being the sum of $140.66 is unau- [fol. 32] thorized, unreasonable, excessive, exorbitant, unjust and unearned, of no value to the said district or the tax payers thereof.

17. That the item charged against the said district being "Interest on borrowed money" in the sum of $932.20 is also unauthorized, unreasonable, excessive, exorbitant unjust and unearned, of no value to said district or the property owners therein;

18. All of the said items having been charged against the said district as preliminary expenses and being so exorbitant, excessive, and unjust as above set forth should not constitute a lien against the property of any of these complainants or any other in the said district.

Premises considered plaintiffs pray that said decree be set aside, quashed and held for naught, and that a receiver be appointed to wind up the affairs of this district, and that all creditors of said district be required, within a limited time, to file their claims with said receiver, and that upon a final hearing, so much of said claims as are found by this Court to be unjust to be disallowed, and for all equitable relief.

Thos. B. Pryor, E. D. Chastain, Warner, Hardin & Warner,
Solicitors for Plaintiffs.

[fol. 33] [Title omitted]

On this day the defendant files an answer to the complaint and the amendment to the complaint filed on third day of November 1921 is noted of record.

IN THE CHANCERY COURT OF CRAWFORD COUNTY

[Title omitted]

ANSWER

Comes the defendant, Western Crawford Road Improvement District, and its Commissioners, and for answer to the complaint of the plaintiffs herein says:

That plaintiffs, in paragraphs numbered 1, 2, 3 and 4, have set forth in detail some of the things done by defendant Road Improvement District while it was preparing to carry the provisions of the act creating the district into effect; but defendant says that in addition to the things done by the Road District set forth in said paragraphs, it advertised for and received bids for the work of construct-
[fol. 34] ing and improving said roads, which bids were under consideration by the commissioners at the time they decided to abandon the undertaking to build the roads in the district contemplated by the act and which bids were rejected at or before the time the commissioners decided not to build the said roads.

And defendant says that, while its commissioners were in good faith going ahead with the formation of the Road Improvement District and preparing to carry the provisions of the act creating the district into effect by constructing and improving the roads therein specified it incurred the preliminary expenses complained of by the plaintiffs herein; that the expenses incurred by the District are the usual and necessary expenses of organizing such improvement districts and that the charges are not exorbitant and were all incurred before there was any objection to constructing and improving the roads in the District and before any suit was commenced to prevent the same; that each and every item of the preliminary expenses are strictly in accordance with the contracts made for same by the commissioners, and as provided by the act; that the compensation of the

Commissioners is fixed at $5.00 per day for each day devoted by them to the work of the district, and they were paid upon the basis fixed by the act; that the act does not fix the compensation of the assessors, but the Commissioners allowed and paid them $5.00 per day for the time actually devoted by them to making the assessment of benefits; that the charges made against the District for publishing notices, printing stationery, and record and assessment books are in accordance with the usual and customary charges for such services [fol. 35] and supplies; that the District had a contract in writing with its engineers, Pritchett & Fry, by which they were to be paid five per cent for all of their services in the work of constructing and improving the roads in the district, to — paid to them one-fifth at a time as the work progressed and under the contract the work of the district progressed to the stage which entitled them to receive under the contract two-fifths of their compensation, and the district issued to them its certificates of indebtedness or promissory notes to cover what had been earned by them under the said contract; that the amount due Geo. B. Rose and E. L. Matlock, attorneys, was fixed by agreement and is reasonable for the services rendered by them, and that said attorneys have not received any money or evidence of indebtedness from the district; that all the other items of the preliminary expenses of the district were paid by the district as the work progressed and when there were no objections to the improvement and no suit pending and such expenditures and payments were made in good faith by the Commissioners in carrying out the provisions and purposes of the act creating the district and in accordance with the act which authorized them to employ engineers, attorneys, agents and servants to carry on its work and to purchase such materials and supplies as were necessary and to make contracts therefor.

That it is true, as alleged by plaintiffs, the preliminary expenses of the district constitutes a lien upon the real property in the district, but defendant says that section 25 of the act creating the district so provides.

That plaintiffs were not entitled to notice of the filing of the petition for a tax levy to pay the preliminary expenses of the District, [fol. 36] as no notice of the same is provided for by the act and the decree of the court levying the tax did not deprive any taxpayer of his day in court if he desires to complain of the same; and defendant says that section 25 of the act, vesting the power in the chancery court to levy a tax to pay the preliminary expenses of the district is not unconstitutional as the Legislature has the power to levy the tax itself or to delegate the power and authority to do so to some other agency.

That the act creating the Western Crawford Road Improvement District is not in violation of section 1, Article 14 of the 14th Amendment to the Constitution of the United States, and is not in violation of section 5, article 16 of the Constitution of Arkansas, and is not in violation of section 6238 of Crawford & Moses' Digest of the laws of Arkansas, and that said decree levying the taxes to pay said preliminary expenses is not in violation of said statute.

That defendants' Board of Commissioners, acting with full knowl-

edge of the facts, ascertained and determined the amount of t
preliminary expenses of the district and reported the same to t
Chancery Court and the Chancery Court levied a tax upon the re
property in the Road District sufficient to cover the preliminary e
penses and appointed C. M. Bledsoe receiver to collect said tax, all
which procedure was regular and in conformity with the act creati
the district; that the Legislature ascertained and determined that,
the event for any reason the roads were not built, the prelimina
expenses should be borne by the real property in the district su
[fol. 37] expense to be levied and collected upon the assessed val
ation of the same made by the county assessor for the purpose
taxation for State and County purposes, and defendant says that sa
procedure and the former decree of the court thereon should not
disturbed.

Wherefore, defendants prays for an order and decree of the cou
dismissing the plaintiff's bill for review of the Court's said form
decree, and that defendant have such further relief as it may a
pear to be entitled to receive upon the final hearing of the cause.

E. L. Matlock, Attorney for Defendar

[fol. 38] IN THE CRAWFORD CHANCERY COURT

[Title omitted]

AMENDMENT TO ANSWER

The defendant, Western Crawford Road Improvement Distri
for an amendment to its answer filed herein says:

That the legislature in passing the act creating the Western Cra
ford Road Improvement District ascertained and determined that,
for any reason the improvement contemplated by the District shou
not be made the preliminary expenses incurred by the district shou
be assessed against the real estate in the district upon a basis of t
assessed valuation of the same made for county and state taxatio
which apportionment and distribution of the preliminary expens
the legislature determined would be fair and equal and defenda
says that said apportionment so determined by the legislature is fa
and equal and should not be disturbed by the court.

Western Crawford Road Improvement District, By E. L. Ma
lock, Its Attorney.

[fol. 39] IN THE CRAWFORD CHANCERY COURT

No. 1297

[Title omitted]

MOTION TO REQUIRE DEFENDANTS TO FURNISH BILL OF PARTICULARS

Come the above named plaintiff- and pray the court for an order herein requiring the defendants to furnish the plaintiffs with a bill of particulars as to work and labor done and materials furnished and expenses and interest earned and paid out, as charged in the entire claim of $2,223.00 in the above entitled enterprise, to wit: Western Crawford Road Improvement District.

—— ——, Solicitors for Plaintiffs.

[fol. 40] IN THE CRAWFORD CHANCERY COURT

[Title omitted]

BILL OF PARTICULARS

Comes the Western Crawford Road Improvement District and in response to the motion and request of the plaintiffs for a bill of particulars, beg leave to file the following bill of particulars of items of preliminary expenses incurred by the Road Improvement District, as follows:

1. Engineering Fees.—Under the contract with Pritchett & Fry, engineers for the district they were to receive an amount equal to five per cent of the actual constructing costs of all the improvements made by the district, to be paid as follows: One-fifth of the entire fee to be paid when the final plans were accepted by the district; one-fifth to be paid when the construction contract was let, and if, for any reason, the letting of the contract was delayed for ninety days from the acceptance and approval of the plans the engineers were entitled to the second one-fifth of the total fee. May 11, 1920, the plans, specifications and estimates of the engineers for the road improvement in the district were approved and adopted by the district and were filed with the county court. Under the contract the engineers were entitled to receive one per cent of the total estimated cost of the improvement which sum, amounting to $9,378.50 was paid to them in the form of a note to the district due ninety days [fol. 41] after date and bearing interest at the rate of six per cent per annum. Bids for the constructing of the Improvement was advertised for by the Board to be received June 15, 1920, and on that day bids were received and of said bids the proposal of J. H. Early to construct the improvement, excepting the steel bridges, for $786,-

282.93, and the Township Supply Company $89,909.00 for the steel bridges aggregating the total sum of $872,191.93, were the lowest bids for the entire improvement contemplated by the district, these proposals were taken under advisement by the Board of Commissioners and were under consideration at the time the Board decided to abandon the work. July 22, 1920, the Board of Commissioners executed its notes to the engineers for the second installment of their fees, amounting to $8,065.34, based upon the proposal for construction which the Board had under consideration, due three months after date bearing interest at the rate of six per cent per annum. These two notes of the district and the interest accrued thereon constitute the items of engineering fees charged for in the preliminary expenses of the district, and are in accordance with the written contract between the district and the engineers.

2. Attorney's Fees.—George B. Rose wrote the act creating the district originally and later rewrote it so as to conform to changes deemed to be necessary by the promoters of the improvement; he passed upon the legality of the passage of the act creating the district; he examined and passed upon the legality of the assessment of benefits in the district, going over the assessor's book; and advised the Board of Commissioners with reference to their procedure in various ways, for all of which service the Commissioners agreed to [fol. 42] pay him the sum of $400.00 and has paid him the sum of $100.00 leaving a balance of $300.00 due him.

E. L. Matlock prepared the outline and described the boundaries of the district and assisted George B. Rose in writing the original act and in rewriting the act, making a trip to Little Rock on each occasion; he personally attended all the meetings of the Board of Commissioners and kept the minutes of the proceedings of their meetings; he prepared the form for the assessment book and supervised the making of the assessment of the benefits in the district; he examined and passed, upon and made a trip to Little Rock to submit, the assessment after it was made to George B. Rose and conferred and went over the same with him; he examined all proposals to the Board and counseled and advised them with reference to their duties and the work from time the Board was organized until it decided to abandon the improvement, covering a period of time from February 9, 1920, to October 29, 1920, and after the Board decided to abandon the work he prepared the petition to the chancery court for the tax levy to pay the preliminary expenses of the district, and wrote the precedent for the decree of the Court making the tax levy. For all of which services in the aggregate, the Board of Commissioners agreed to pay him of the sum of $1,000.00. None of which sum has been paid.

3. Printing.—Van Buren Press-Argus, 500 letter heads, $5.75; 500 envelopes $5.00; 500 envelopes $5.25; 1,000 litographed voucher checks bound $30.00; publishing notice of filing of assessment $10.00; advertisement for proposals to build the road $26.00. Total $82.00. All of which has been paid by the district.

Arkansas Gazette for publishing advertisement for proposals to [fol. 43] build the roads one month, $96.00. Which sum has been paid by the District.

Southern Construction News for publishing advertisement for proposals to build the roads four times from May 22, 1920, to June 12, 1920, $54.00. Which sum has been paid by the district.

St. Louis Post Dispatch for publishing advertisement for proposals to build the roads seven times, $111.30. Which sum has been paid by the district.

4. Assessment Book.—The Rains Abstract Company, for making the assessment book, including description of subdivisions of original tracts, $400.00. This sum was paid to Rains Abstract Company by the road district under a contract for said work.

5. Commissioners.—E. R. McRae for sixteen days' service as a member of the Board of Commissioners $80.00, and for expenses as such commissioner $7.50. Total $87.50. This sum has been paid to the Commissioners by the District.

R. S. Wilson, Commissioner, for eight days' service as a member of the Board, $40.00, and for expenses in connection with the work of the Board $12.10. Total $52.10, which sum has been paid to him by the district.

W. A. Steele, Commissioner, for ten days' service as a member of the Board $50.00. This sum has been paid to the Commissioner by the district.

6. Assessors.—S. U. Byrum for eleven days' service as assessor for the district $55.00, and for expenses in making the assessment $22.00. Total $77.00. This sum has been paid to the assessor by the district.

A. W. Hays for eleven days' service as assessor $55.00 and for ex- [fol. 44] penses in making the assessment $22.00. Total $77.00. This sum has been paid to the assessor by the district.

W. A. Bostick for 19 days' service as assessor $95.00, and for expenses in making the assessment of $20.00. Total $115.00. This sum has been paid to the assessor by the district.

7. Records.—Calvert-McBride Printing Company for one minute book $10.25, one cash book $22.75, one assessment record $26.50. Total $59.20. Which sum has been paid by the district.

8. Expenses.—Amount paid to E. L. Matlock for expenses incurred in making three trips to Little Rock $37.75, for telephone messages paid by him $7.15. Total $44.90. This sum has been paid to him by the district.

9. Interest.—Interest on money borrowed at The First National Bank and interest paid on notes to Pritchett & Fry, and interest accrued on borrowed money and notes to Pritchett & Fry, to the time the petition for tax levy was filed $1,072.86. Some of this interest has been paid by the district and some has accrued but is not paid.

The foregoing items were allowed by the Commissioners as preliminary expenses of the district at the time the petition for tax levy was filed. There *has* been some expenses incurred in the collection of the taxes to pay the preliminary expenses since the tax levy was made, and on account of the delay in winding up the district occasioned by this suit, a greater amount of interest has accrued than that mentioned in the decree and tax levy, and some costs have incurred in behalf of the district in this litigation the amount of which is to the district at this time unknown.

Western Crawford Road Improvement District, By E. L. Matlock, Its Attorney.

[fol. 45] In Chancery Court of Crawford County

[Title omitted]

Decree Suspending Decree for Tax Levy

Now on this 27th day of January, 1922, this cause came on to be heard before the Chancellor of the Tenth Chancery District, the Honorable J. V. Bourland, at chambers in Fort Smith, Arkansas, under a consent order made by the Chancery Court of Crawford County and entered in said court on January 16, 1922, and comes the parties plaintiff by their attorneys, Thomas B. Pryor, Harry P. Warner and E. D. Chastain, and the defendant by its attorney E. L. Matlock, and the intervener, Hanchett Bond Company, by its attorney, H. L. Fitzhugh.

And the complaint in this case is taken and considered by the Court as a bill for review of the former decree of the court levying a tax to pay the preliminary expenses incurred in the Western Crawford Road Improvement District, which was made and entered in the Crawford Chancery Court, November 3, 1920.

And the court, after hearing the argument of counsel, doth find that said former decree levying said tax should be reopened and set aside for the purpose of giving the plaintiffs and other persons, an opportunity to be heard upon the merits of their contention that the alleged preliminary expenses of the district are excessive, unjust and illegal and that their property should not be taxed for the payment of the same.

It is therefore by the Court considered, ordered adjudged and decreed that the decree of the Chancery Court of Crawford County [fol. 46] made and entered November 3, 1920, levying a tax of 1.65 per cent upon the valuation of the real estate in the Western Crawford Road Improvement District, as made and shown upon the county assessors' assessment books for the purpose of general taxation, for the purpose of paying the preliminary expense of said Road District, be and the same is hereby reopened, set aside and the operation of the same suspended, for the purpose of giving the plaintiffs, and other tax payers in said Road Improvement District, an opportunity

to be heard upon the merits of their contention that, the items of preliminary expenses of the district are exorbitant, unjust and illegal and that a tax should not be levied against their property and collected for the payment of the same; and in order that the court may determine any and all issues raised in the case, and the case is set for further hearing in the Chancery Court of Crawford County on March 8, 1922, of which hearing all parties to the same are hereby taxed with notice.

This hearing being had before the Chancellor at chambers under a consent order made in the chancery court of Crawford County, it is ordered that this decree be entered at large upon the record of said chancery court then to become the order and decree of the chancery court of Crawford County. To which action of the court the defendant at the time objected and excepted.

[fol. 47] EXHIBIT IN EVIDENCE: ATTORNEYS' BILL

Western Crawford Road Improvement District to Rose, Hemingway, Cantrell & Loughborough, Dr.

1920. To contract for professional services as follows: Writing Act creating the district; passing upon the validity of the passage of the Act; passing upon the legality of the assessment of benefits in the district, and advice upon various matters in connection with the district $400.00

Credit

1920.
July. 29. By Cash 100.00

Balance Due $300.00

STATE OF ARKANSAS,
County of Pulaski:

I say that I am a member of the firm of Rose, Hemingway, Cantrell & Loughborough; that the foregoing bill is just and correct, and that the sum of $300.00 is due thereon upon contract made with the Board of Commissioners of the Western Crawford Road Improvement District for the services mentioned and set forth therein; and that nothing has been paid thereon except as therein stated.

G. B. Rose.

Subscribed and sworn to before me this 12th day of January, 1922. A. W. Dobyns, Notary Public. My commission expires Oct. 23, 1923. (Seal.)

[fol. 48] IN CHANCERY COURT OF CRAWFORD COUNTY

[Title omitted]

[fol. 49] FINDINGS & DECREE

Now on this 8th day of March, 1922, this cause came on to be heard, and came the plaintiff Missouri Pacific Railroad Company by its attorneys, Thomas B. Pryor, and the St. Louis-San Francisco Railway by its attorneys, Warner, Hardin & Warner, and the above named individual complainants by their attorney, E. D. Chastain, and came the defendant, Western Crawford Road Improvement District by its attorney, E. L. Matlock, and the intervener, Hanchett Bond Company by its attorneys, Hill & Fitzhugh, and all parties announced ready to submit the cause.

Whereupon at the beginning of the trial, by agreement of the parties it was by the Court ordered that H. C. Rains, a stenographer, should take down all oral testimony in short hand, the same to be by him transcribed by request of any party to the suit or anyone having an interest therein, and such oral evidence when so transcribed and filed with the papers in the case to become the depositions of the witnesses so testifying and to become a part of the record whether transcribed in term time or thereafter, and the Court proceeded to [fol. 50] hear the cause on the oral, documentary and record evidence in the cause.

And the court, after hearing the evidence and the argument of counsel, took the cause under consideration and now on this 19th day of June, 1922, doth find:

1. That pursuant to the provisions of the act creating the Western Crawford Road Improvement District the defendant Commissioners took the oath of office provided by the act and entered upon their duties as such Commissioners; that in good faith and for the purpose of carrying the provisions of the act into effect the Commissioners of the district employed civil engineers to make surveys, plans and estimates of the cost of constructing and improving the road in said district, mentioned in said act; that they employed attorneys to do the legal work for the district; that they purchased such record books stationery, and other material as was necessary in carrying on the work provided for by the said act; that they employed the necessary clerical help to inscribe the lands of the district in a record book for the purpose of making the assessment of benefits contemplated by the act; that they elected three assessors as provided by the act, to assess the benefits accruing to each tract of land, railroads, tramroads, telegraph, telephone and pipe lines and other improvements on real estate to be benefited by the making of the roads.

2. That pursuant to their employment the engineers for the district, in good faith, entered upon the work of their employment and

made all the surveys, plans and estimates of the cost of constructing [fol. 51] and improving the public roads provided for in the district, which surveys, plans and estimates were approved by the State Highway Department and by the Board of Commissioners, and the same were duly filed with the County Clerk of Crawford County, as provided for by said act; that pursuant to their employment the attorneys for the district entered upon their duties in good faith, and approved the validity of the passage of the said act, prepared such papers and documents and rendered all counsel and services to the Board of Commissioners as was necessary and required of them during the progress of the work of the district; that the clerical help employed by the Commissioners, in good faith, prepared the assessment record, and performed such further work as was necessary and required of them by the Commissioners; that the assessors for the district made the assessment of benefits as provided by law, in good faith, which assessment was duly filed with the County Clerk of Crawford County for inspection and notice of the same published, as required by the act; that on the 1st day of September, 1920, complaints against said assessment of benefits would be heard by said Board of Commissioners, at the room in the County Courthouse where the circuit court of said county is held.

3. That the defendant Commissioners met in formal session on the first day of September, 1920, in the circuit court room in the county court house in Crawford County, Arkansas, to hear the complaint of the owners of the real property situated in the Western Crawford Road Improvement District, as per the notice given; at said hearing a large number of the land owners in the district gathered and so urgently demanded of the Commissioners that the roads [fol. 52] be not built that the commissioners decided to not build the roads and by request of the land owners present unanimously adopted the following resolution which was written and adopted by the land owners and tendered to the Commissioners for their adoption, to wit:

"Resolved by this meeting that it is the sense of the people of the Western Road District of Crawford County that the Commissioners of said district should take no further action in the matter of building the road and should incur no further expense in the building of the same and should take no steps to make the present assessment final, but wind up the business of the District;" and that thereupon the Board of Commissioners canceled, annulled and set aside, by its unanimous vote, the assessment of benefits which had been made and filed, as above set forth, and decided to not build the roads contemplated by the act creating the district and to abandon the improvement and wind up the affairs of the district in the manner provided by the act creating the same.

4. That during the progress of organizing said improvement work, as aforesaid, the Board of Commissioners for the district, in good

faith, incurred on behalf of the district the following expenses to wit:

Engineering fees, Pritchett & Fry (now owned by Hanchett Bond Co.)	$17,443.8
E. L. Matlock, Attorney fee	1,000.0
Geo. B. Rose, " "	400.0
Van Buren Press-Argus, for printing	82.0
Arkansas Gazette, " "	96.0
Southern Construction News "	54.1
St. Louis Post Dispatch "	111.3
Rains Abstract Co. for making assessment book	400.0
E. R. McRae, per diem and expenses as Commissioner	87.5
R. S. Wilson, " " " " " "	52.1
W. A. Steele, " " " " " "	50.0
[fol. 53] S. U. Byrum, Assessor	77.0
A. W. Mays, "	77.0
W. A. Bostick, "	115.0
Calvert-McBride Printing Co., for records	59.5
E. L. Matlock, expenses incurred for district	44.9
Interest paid on borrowed money and on Engineer's Certificates	461.6
Total	$20,611.80

all of which expenses were by the Board of Commissioners examined audited, found to be correct and just claims against the district and were by the Board of Commissioners approved and allowed for payment; and the court finds that all of said claims for services rendered and expenses incurred were necessary preliminary expenses of the district, and that such services were rendered and expenses incurred in good faith by the parties, excepting the claim of Geo. B. Rose for $300.00 which the court finds is not a just claim against the district for preliminary expenses because it is a charge for services rendered by him in writing the act creating the district.

5. That the total assessed valuation of all the lands, railroads, tramroads, telegraph, telephone and pipe lines, and other improvement on the real estate in the said district, as shown by the last county assessor's assessment of the same, aggregates the sum of $1,453,938.00; that the total benefits assessed against the property in the district by the assessors estimated to accrue by reason of the proposed road improvement was $1,327,382.50.

6. That the total assessed valuation for general taxation of the Saint Louis-San Francisco Railway right-of-way tracks, building and other improvements thereon in the Western Crawford Road Improvement District is $167,845.00; that the benefits assessed against [fol. 54] said property of the Saint Louis-San Francisco Railway by the assessor was $2,341.50; that the total assessed valuation for general taxation of the right-of-way, building and other improvements thereon of the Missouri Pacific Railroad situated in the

Western Crawford Road Improvement District is $145,250.00, and that the benefits assessed against the property of said railroad by the assessors of said road district was $1,960.00.

7. That of the foregoing items of preliminary expenses the following items have, in good faith, been paid by the Commissioners of the road district, during the progress of the preliminary work, out of the funds of the district and are not now unpaid claims against the district, to wit:

George B. Rose, Attorney fee	$100.00
Van Buren Press Argus, for printing	82.00
Arkansas Gazette, for printing	96.00
Southern Construction News, for printing	54.10
St. Louis Post Dispatch, for printing	111.30
Rains Abstract Co., making assessment book	400.00
E. R. McRae, per diem and expenses as Com'r	87.50
R. S. Wilson, " " " " " "	52.10
W. A. Steele, " " " " " "	50.00
S. U. Byrum, Assessor	77.00
A. W. Hays, "	77.00
W. A. Bostick, "	115.00
Calvert-McBride Printing Co., for records	59.50
E. L. Matlock, expenses incurred for district	44.90
Interest paid on borrowed money and on Engineer's certificates	461.66

And that the following items of preliminary expense, which the court finds to be valid claims against the district, remain unpaid, to wit:

[fol. 55] Engineering fees, Pritchett & Fry, (Now owned by Hanchett Bond Co.)	$17,443.84
With interest from November 1, 1920, at the rate of 6% per annum,	
E. L. Matlock, Attorney fee	1,000.00
With interest from October 29, 1920, at the rate of 6% per annum,	
The First National Bank of Van Buren, Arkansas	2,000.00
With interest from December 5, 1920 at the rate of 6% per annum.	

8. And the Court further finds that the preliminary expenses of the district above set forth should be levied against the property situated in said road district, subject to taxation for the purpose of paying said preliminary expenses, upon a basis of the benefits assessed against said property by the assessors for the district July 30, 1920, and filed in the office of the County Clerk July 31, 1920; and it is estimated that two per cent (2%) of said benefit assessment will be sufficient to pay said preliminary expenses, including the unpaid claims and the interest accrued and to accrue upon the same, and the costs and expenses of collecting said taxes.

9. That a number of the land owners in the district, paid taxes upon a basis of the County Assessor's valuation of their property for the purpose of paying said preliminary expenses under a decree of this court levying the same entered on November 3, 1920, which decree was afterwards vacated and set aside.

It is therefore by the Court considered, ordered, adjudged and decreed:

1. That the payment of the following items of preliminary expenses of the Western Crawford Road Improvement District by the Commissioners of the same is hereby ratified, approved and confirmed, to wit:

[fol. 56] George B. Rose, Attorney fee	$100.00
Van Buren Press-Argus for printing	82.00
Arkansas Gazette, for printing	96.00
Southern Construction News, for printing	54.10
St. Louis Post Dispatch, for printing	115.30
Rains Abstract Co., for making assessment book	400.00
E. R. McRae, per diem and expenses as Com'r	87.50
R. S. Wilson " " " " " "	52.10
W. A. Steele " " " " " "	50.00
S. U. Byrum, Assessor	77.00
A. W. Hayes "	77.00
W. A. Bostick "	115.00
Calvert-McBride Printing Co., for records	59.50
E. L. Matlock, expenses incurred for district	44.90
Interest paid on borrowed money and on Engineer's certificates	461.66
Total	1,868.06

2. That the following unpaid claims against the district are hereby ordered paid, to wit:

Engineering Fees, Pritchett & Fry	$17,443.84
(Now owned by Hanchett Bond Co.) with interest from November 1, 1920, at the rate of 6% per annum.	
E. L. Matlock, Attorney Fee	1,000.00
With interest from October 29, 1920, at the rate of 6% per annum.	
The First National Bank of Van Buren, Ark.	2,000.00
With interest from Dec. 5, 1920, at the rate of 6% per annum.	

3. That the claim of Rose, Hemingway, Cantrell & Loughborough be and the same is hereby disallowed.

4. That a tax levy of two per cent (2%) be, and the same is hereby made upon all the lands, railroads, tramroads, telegraph, telephone and pipe lines, and other improvements on the real estate in the said district, upon a basis of the benefits found to accrue to the same by

ason of the road improvements contemplated in the district, as own upon the assessment book made by the assessors of the district July 30, 1920, and now on file in the office of the county clerk of awford County, Arkansas, which said tax shall be extended ol. 57] against each tract, lot or parcel of land, and each railroad, ilroad, telegraph, telephone and pipe line, and other improve- nt on the real estate in the district upon a basis of two per cent %) of the benefit found to accrue against the same, and that the me be entered upon a book suitable for that purpose and collected the sheriff and ex-officio collector of Crawford County at the same ne he collects taxes upon such property for general purposes in e year 1923 for the year 1922; and the sheriff and ex-officio collector Crawford County, w-oever he may be at the time, is hereby ap- inted receiver and he is ordered to collect said taxes at the time ntioned and to report his acts under this appointment to the court its regular May 1923 term; and in cases where property owners ve paid the preliminary taxes levied by said former decree of the urt the sheriff and ex-officio collector, as such receiver is ordered adjust such payments, giving back to the tax payers such sums they may have paid in excess of this levy and collecting from them h sums as they may still owe upon a—(Sentence not concluded).

To the finding and judgment of the court dis-allowing their claim e interveners, Rose, Hemingway, Cantrell & Loughborough, at e time objected and excepted and prayed an appeal to the Supreme urt which prayer was granted and the appeal allowed.

To the finding and judgment of the court levying the taxes to pay e preliminary expenses of the district upon a basis of the benefit essment the Western Crawford Road Improvement District and Commissioners at the time objected and excepted and prayed an peal to the Supreme Court which prayer was granted and the peal allowed.

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ol. 58] STATE OF ARKANSAS,
County of Crawford:

CLERK'S CERTIFICATE

I, Wallace Oliver, Clerk of the Chancery Court within and for awford County, Arkansas, do hereby certify that the foregoing ges of typewritten matter constitutes a full and complete copy of the pleadings, record entries and papers in the above entitled se, affecting the issues, judgments and decrees of the Chancery urt of Crawford County, in the above entitled cause, from which peal has been taken to the Supreme Court.

In testimony whereof, I have hereunto set my hand as such Clerk d caused the seal of said Court to be affixed this 2nd day of Novem-, 1922.

Wallace Oliver, Clerk. (Seal.)

[fol. 59] IN THE SUPREME COURT OF ARKANSAS, FEBRUARY 26, 1923

[Title omitted.]

OPINION

McCULLOCH, *C. J.*:

A road improvement district designated as Western Crawford Road Improvement District was created in Crawford County by special statute (unpublished) at the extraordinary session of the year 1920, and there were proceedings under the statute up to the assessment of benefits by the assessors and the filing of the list of assessments with the clerk of the county court for approval by the board of commissioners. The statute contained the usual provisions with reference to giving notice of the assessments and providing for a hearing upon the correctness of the assessments.

On the day provided for the hearing there were numerous protests made by owners of property to further proceedings toward the construction of the improvement on the ground that the improvement was too expensive and that the cost would probably exceed the benefits, and the commissioners, without acting upon the list of assessments filed by the assessors, decided to abandon the whole project as being impracticable. There were no further proceedings toward carrying out the construction of the improvement, but there had been preliminary expenses incurred, and the statute contained the following provision with reference to the payment of such expenses:

"Section 25. In case, for any reason, the improvement contemplated by this district is not made, the preliminary expense shall be a first lien upon all of the lands in the district, and shall be paid by a levy of a tax thereon upon the assessed value for county and State [fol. 60] taxation, which levy shall be made by the chancery court of Crawford County and shall be collected by a receiver to be appointed by said court."

The commissioners of the district, pursuant to the provisions of that part of the statute quoted above, prepared an itemized statement or list of the preliminary expenses and filed a petition in the Chancery court of Crawford County setting forth in detail all the proceedings in connection with the preliminary expenses incurred and asked the court to levy a tax upon the property in the district to raise funds for the payment of such expenses. The court disallowed one of the claims, but no appeal has been prosecuted from that part of the decree. The remainder of the claims were approved by the chancery court and ordered paid, but in the final decree rendered the court refused to order payment of assessments in accordance with the directions of the statute quoted above, but ordered that the payments be made in proportion to the anticipated benefits assessed by the board of assessors.

It appeared from the proof that the property of two railroad corporations whose lines of railroad ran through the district would,

under the method of assessment prescribed by the statute, amount to more than the whole of the anticipated benefits as assessed by the assessors of the district. It is shown that the assessed benefits of the Missouri Pacific Railroad were $1,960, whereas the levy of the tax on that property, according to the "assessed value for county and State taxation." would amount to $2,396.62. The board of assessors had assessed the property of the St. Louis-San Francisco Railway [fol. 61] Company at $2,351.50, and it is shown that the amount to be paid on a levy in accordance with the provisions of the statute would be $2,769.40.

The chancery court based its conclusion on the ground that the assessment made by the board of assessors was conclusive as to the amount of anticipated benefits from the construction of the improvement and that the owners of property could not be taxed for preliminary expenses in excess of the anticipated benefits.

It will be observed that the statute involved in this inquiry expressly provides that in case the contemplated improvement is abandoned, "the preliminary expenses shall be a first lien upon all of the lands in the district, and shall be paid by a levy of a tax thereon upon the assessed value for county and State taxation." This court has decided heretofore that the method of assessment prescribed in this statute is valid as applied to the method of payment for a completed improvement (St. L. Sw. Ry. Co. v. Board of Directors, 81 Ark. 562), or for the method of payment of preliminary expenses. Board of Directors v. Dunbar, 107 Ark. 285; Neterer v. Dickinson & Watkins, 153 Ark. 5. The decisions on this question were based on the ground that the statute constituted a legislative determination that benefits would accrue in proportion to value. Special application of this rule was made in the Neterer case, supra, where a different method of assessment had been provided under the statute for payment of the cost of the improvement, if completed. In that connection we said:

"The two methods of assessment are for wholly different purposes. One is for the payment of the cost of the completed improvement, which must be by taxation based upon and apportioned on benefits [fol. 62] to accrue. The other is a mere provision for the payment of preliminary expenses where the improvement is not undertaken at all. This provision necessarily implies a determination by the Legislature that there are anticipated benefits, at least to the extent of the cost of the preliminary expenses, apportioned according to assessments for county purposes, but it is neither unfair nor violative of any right of landowners to provide that, in the event the contemplated improvement is not undertaken, the preliminary expenses shall be paid according to value, and not according to anticipated benefits. The distinction lies between the payment of preliminary expenses and payment of the actual cost of the improvement."

It is true that we reiterated in that case what had already been held in the Dunbar case, supra, that assessments for payment of preliminary expenses could not be exacted in excess of anticipated

benefits, but in each of those cases we emphasized the principle tha a provision for payment of preliminary expenses necessarily implie a legislative determination that the cost of the preliminary expense would not exceed the anticipated benefits for the construction of th improvement. The legislative determination is conclusive unles shown on its face to be arbitrary and unreasonable. Desha Roa Imp. Dist v. Stroud, 153 Ark. 587, and cases cited therein.

There is nothing shown in the present case to overcome the legis lative determination except the unapproved assessment lists filed b the board of assessors. The assessment was incomplete because it wa never approved by the board of commissioners. The point was neve reached for the approval, for there was an abandonment of th [fol. 63] district before this was done, and we do not certainly kno what the assessments against the railroads would have been had th assessment of benefits proceeded to finality.

Counsel for appellees lay stress upon the statement in the opinio in the Neterer case to the effect that the payment of preliminary ex penses must not exceed the anticipated benefits, but this was a mer reiteration of what we have held in other cases in regard to taxatio upon property and was a mere statement of the principle withou undertaking to determine how it might be shown that the taxe exceeded those benefits. We have always adhered to the principl that the right to tax for local improvements is limited to the amoun of anticipated benefits, but, at the same time, we have consistentl held that the legislative determination of the amount of benefits, o the legislative provision for the method of determining benefits wa conclusive unless shown to be arbitrary. So we hold now that thi legislative determination is conclusive, and it is not sufficient to over come this by showing that an incomplete assessment of benefits mad by the board of assessors was less than the amount of taxes that th appellees would be required to pay under the other method prescribe by the statute.

The chancery court erred, therefore, in refusing to follow th statute, and the decree is reversed and the cause remanded wit directions to enter a decree levying taxes on the property in th district in accordance with the terms of the statute; that is to say "upon the assessed value for county and State purposes."

Wood and Hart, JJ., dissent.

[fol. 64] Be it remembered, That at a term of the Supreme Cour of the State of Arkansas, begun and held at the Court House, in th City of Little Rock, on the 27th day, being the fourth Monday o November, A. D. 1922, the following proceedings were had, to wit

January 22, 1923

[Title omitted]

ORDER SETTING CAUSE FOR HEARING

On motion and for sufficient cause appearing to the Court this cause is advanced pursuant to the statute and set down for submission on February 12th, prox.

February 12, 1923

(Caption omitted)

SUBMISSION OF CAUSE

The following causes being regularly called, come the parties thereto by their attorneys and solicitors, and said causes are submitted upon the transcripts of the records and the briefs filed, and are by the Court severally taken under advisement, viz: [title omitted].

IN SUPREME COURT OF ARKANSAS, February 26, 1923

(Caption omitted)

DECREE

This cause came on to be heard upon the transcript of the record [fol. 65] of the chancery court of Crawford County, and was argued by solicitors, on consideration whereof it is the opinion of the Court that there is error in the proceedings and decree of said chancery court in this case, in this: The court erred in refusing to order the payment of assessments in accordance with the provisions of the statute.

It is therefore ordered and decreed by the Court that the decree of said chancery court in this cause rendered be, and the same is hereby, for the error aforesaid, reversed, annulled, and set aside with costs, and that this cause be remanded to said chancery court with directions to enter a decree levying the taxes on the property in the district upon the assessed value thereof for county and state purposes, in accordance with the statute aforesaid.

It is further ordered and decreed that said appellant recover of said appellee all its costs in this Court in this cause expended, and have execution thereof. Wood and Hart, JJ. dissent.

IN SUPREME COURT OF ARKANSAS, March 19, 1923

(Caption omitted)

ORDER OVERRULING PETITIONS FOR REHEARING

Petitions for rehearing having been filed in the following causes within the time allowed by law, and having been duly served, they are now submitted with the supporting briefs and responses filed, and are by the Court severally taken under advisement; viz: [title omitted].

[fol. 66] March 26, 1923

(Caption omitted)

Being full advised, the petitions for rehearing filed in the following causes are by the Court severally overruled, viz: [title omitted].

[fol. 67] IN THE SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR REHEARING—Filed March 13, 1923

Come the Missouri Pacific Railroad Company and St. Louis-San Francisco Railway Company, and petition the Court to set aside the judgment rendered herein, and to grant them a rehearing, and for grounds therefor state:

I.

That the court erred in holding and deciding that the preliminary expenses incurred by said appellant should be paid by levy of a tax upon the assessed value of all property within said Road Improvement District for County and State taxation.

II.

That the Court erred in holding that said preliminary expenses should not be paid by levy of a tax upon the benefits as assessed by the Board of Assessors for said Road Improvement District for the construction and improvements of the roads and highways contemplated by the act of the Legislature creating said Road Improvement District.

III

That the Court erred in holding that Section 25 of the act creating said Road Improvement District and providing that in case, for any reason, the Improvement contemplated by said District is not made,

[fol. 68] the preliminary expense should be a first lien upon all of the land in the District and should be paid by a levy of a tax thereon upon the assessed value for County and State taxation, constituted a legislative determination that benefits would accrue in proportion to value.

IV

That the Court erred in holding that said provision as contained in Section 25 of the act creating said Improvement District was not arbitrary and unreasonable, and that the method of assessment prescribed in said statute is valid as applied to the method of payment for preliminary expenses incurred by said Road Improvement District.

V

That the Court erred in holding that said provision of the act creating said Road Improvement District implies a determination by the Legislature that there are anticipated benefits at least to the extent of the costs of the preliminary expenses apportioned according to assessments for County purposes.

VI

That the Court erred in holding that it is neither unfair nor violative of the rights of the appellees to provide that in the event the contemplated improvement was not undertaken that the preliminary expenses should be paid according to the value and not according to anticipated benefits.

VII

That the Court erred in holding that the provision of said act to the effect that if the improvement contemplated was not made that the preliminary expense should be paid by a levy upon the [fol. 69] assessed value for County and State valuation constitutes a legislative determination of benefits, and further erred in holding that the same is conclusive, and that the assessment of benefits as made by the Board of Assessors herein was insufficient to overcome such legislative determination, or to show that the assessment as made by the Board of Assessors was less than the amount of taxes said appellees would be required to pay under the other method prescribed by the statute.

VIII

That the Court erred in holding that the assessment of benefits made and filed by the Board of Assessors, and that, according to the decree of the Crawford Chancery Court, is now a matter of record in the County Clerk's office, was not a complete assessment of benefits that would accrue to the property in said Road Improvement District, and that said assessment so made and extended on the tax books of said District and now on file in the County Clerk's

office should not be made the basis upon which the tax to be levied to pay preliminary expenses.

IX

That the Court erred in holding that the assessment of benefits as made by the Board of Assessors did not correctly show benefits which would accrue from the building of the road contemplated by the District.

X

That the Court erred in holding that the preliminary expenses incurred by said District should be paid upon the basis prescribed by Section 25 of the statute for the reason that said provision of the statute providing for the payment of preliminary expenses upon an [fol. 70] ad valorem basis is palpably arbitrary, demonstrably erroneous, confiscatory, discriminatory, unfair, unjust, inequitable, excessive, exorbitant, and a flagrant abuse of the powers of the Legislature, and is unconstitutional and void, and amounts to a taking of property without process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides:

"Nor shall any State deprive any person of life, liberty, or property without due process of law."

And for the further reason that a tax levied under the provisions of Section 25 would amount to a taking of property for public use without just compensation, and therefore is unconstitutional and void, and in contravention of the Fifth Amendment to the Constitution of the United States which provides that private property shall not be taken for public use without just compensation.

Wherefore, appellees pray that the judgment herein be set aside and the decree of the chancery court affirmed, or that the judgment of this court be modified to the extent of reversing and remanding the cause for the purpose of giving the property owners an opportunity of establishing by proof that the assessment of benefits as made by the Board of Assessors is a fair, just and equitable assessment of benefits, and is true and correct, and that, in that event, the assessment to pay preliminary expenses should be based upon the assessment of benefits as made, rather than upon the assessed value of property as prescribed by section 25 of said act of the Legislature.

Respectfully submitted, Warner, Hardin & Warner, Attys. for the St. Louis-San Francisco Railway Co. Thos. B. Pryor, Atty. for Mo. Pac. Rd. Co.

[File endorsement omitted.]

[fol. 71] STATE OF ARKANSAS, *ss:*

SUPREME COURT

CLERK'S CERTIFICATE

I, W. P. Sadler, Clerk of said Court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of Western Crawford Road Improvement District, Appellant, vs. Missouri Pacific Railroad Company and St. Louis-San Francisco Railway Company, Appellees, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Ark., this 7th day of May, 1923.

W. P. Sadler, Clerk Supreme Court of Arkansas. [Seal of the Supreme Court of Arkansas.]

[fol. 72] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Apr. 23, 1923

Now come the Missouri Pacific Railroad Company, petitioner and plaintiff in error, by Thos. B. Pryor, and comes the St. Louis-San Francisco Railway Company by Warner-Hardin & Warner, its attorneys, and in connection with its petition for writ of error show that in the record and proceedings and in the rendering of the judgment and decision of the Supreme Court of the State of Arkansas in the above entitled cause, manifest error has intervened to the prejudice of these petitioners and plaintiffs in error, in this to-wit:

I

That the Supreme Court of Arkansas erred in holding that Section 25 of the Act of the Legislature creating Western Crawford Road Improvement District which provided:

"In case, for any reason, the improvement contemplated by this district is not made, the preliminary expense shall be a first lien upon all of the lands in the district, and shall be paid by a levy of a tax thereon upon the assessed value for the county and State taxation, which levy shall be made by the Chancery Court of Crawford County and shall be collected by a receiver to be appointed by said court."

should be applied, when according to the undisputed evidence the tax levied upon said basis would exceed the assessment of benefits made against the property by the Board of Assessors if the improvement

[fol. 73] contemplated by the Act had been completed, thereby depriving plaintiffs in error of their property without due process of law and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides:

"Nor shall any State deprive any person of life, liberty or property without due process of law."

And also in violation of the Fifth amendment to the Constitution of the United States which provides:

"Nor shall private property be taken for public use without just compensation."

II

That the Supreme Court of Arkansas erred in holding and deciding that the Missouri Pacific Railroad Company should pay as a tax for the purpose of paying the preliminary expense incurred in said improvement district, the amount of $2,396.62, when the assessed benefits against the property of said railroad in said district, as made by the Board of Assessors as provided by said Act of the Legislature creating said district, only amounted to the sum of $1,960.00, and in deciding that the St. Louis-San Francisco Railway Company should pay $2,769.40 in payment of its portion of the preliminary expenses in said district, when the assessment of benefits made against its property only amounted to the sum of $2,341.50.

III

That the Supreme Court of Arkansas erred in holding and deciding that the assessment of benefits as made by the Board of Assessors should not be considered and treated as the assessment of benefits against the property of the plaintiffs in error herein, as said assessment had not been approved by the Board of Commissioners as provided by said Act, when there was no evidence in the record tending to show that the Board of Commissioners would not have approved [fol. 74] said assessment as made by the said Board of Assessors.

For which errors the petitioners and plaintiffs in error pray that the said judgment of the Supreme Court of the State of Arkansas be reversed and the case remanded with directions that the tax to be levied to pay preliminary expenses shall be made upon the basis of the benefits assessed.

Missouri Pacific Railroad Company, Plaintiff in Error, By Thos. B. Pryor, Its Attorney. St. Louis-San Francisco Railway Company, By Warner, Hardin & Warner, Its Attorneys.

[File endorsement omitted.]

[fol. 75] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR WRIT OF ERROR & ORDER ALLOWING SAME—Filed Apr. 23, 1923

To the Honorable E. A. McCulloch, Chief Justice of the Supreme Court of Arkansas:

Now come Missouri Pacific Railroad Company and St. Louis-San Francisco Railway Company, plaintiff in error, and represent that on the 26th day of March, 1923, a final judgment was duly entered by the Supreme Court of Arkansas, reversing the judgment entered by the Chancery Court of Crawford County, Arkansas, in a suit wherein the Missouri Pacific Railroad Company and St. Louis-San Francisco Railway Company and others were plaintiffs and Western Crawford Road Improvement District was defendant; that this suit arose and was prosecuted as follows:

The Missouri Pacific Railroad Company and St. Louis-San Francisco Railway Company and others brought suit in the Chancery Court of Crawford County to set aside a decree rendered in said court, in which all property owners owning property embraced in said Western Crawford Road Improvement District were adjudged and decreed to pay by the levy of a tax upon the real estate in said district the preliminary expenses incurred in said Road Improvement District. Before the improvement contemplated by the Act creating the Western Crawford Road Improvement District was completed the improvement was abandoned. The Legislature at the extraordinary session which convened on January 26, 1920, passed the act creating the said Road Improvement District and named certain parties therein as Commissioners; that said Commissioners under the provisions of said act appointed a Board of Assessors to assess [fol. 76] the benefits that would accrue to the real property owners in said district; that said assessors proceeded to make an assessment of benefits against each particular tract of land in said district and also against the property of the railroads, telephone, telegraph and pipe line, as provided in said Act; that after the assessment of benefits were made upon the petition of the property owners in said district, the improvement was abandoned; that considerable expense had been incurred by the Commissioners, including fees of engineers, attorneys and the assessors and for other services, and it became necessary to levy a tax to pay said preliminary expenses; that Section 25 of said Act, provided as follows:

"In case, for any reason, the improvement contemplated by this district is not made, the preliminary expense shall be a first lien upon all of the lands in the district, and shall be paid by a levy of a tax thereon upon the assessed value for the county and State taxation, which levy shall be made by the Chancery court of Craw-

ford County and shall be collected by a receiver to be appointed by said court."

That the said Chancery Court of Crawford County upon a hearing of the complaint of the plaintiffs in said suit entered a decree in which it was provided that the preliminary expenses should be said by a levy of a tax based upon the assessment of benefits which would have accrued to said land if the improvement had been completed, and the assessment as made by the Board of Assessors was by the terms of said decree made the basis upon which such tax should be levied; that the defendant, Western Crawford Road Improvement District appealed from said decree and contended that the tax should be paid by a levy made upon the assessed value for county and state taxation; that it was admitted that the assessors assessed the benefits to accrue to the property of the Missouri Pacific Railroad Company at the sum of $1,960.00 and an assessment of benefits of $2,341.50 was made against the property of the St. Louis-San Francisco Railway Company and that a levy of a tax according to the assessed value [fol 77] for county and state taxation would amount to $2,396.62 against the Missouri Pacific Railroad and $2,769.40 against the St. Louis-San Francisco Railway property embraced in said district; that the Supreme Court of Arkansas in reversing the decree of the Chancery Court of Crawford County in its opinion states:

"It appeared from the proof that the property of two railroad corporations whose lines of railroad ran through the district would, under the method of assessment prescribed by the statute, amount to more than the whole of the anticipated benefits as assessed by the assessors of the district. It is shown that the assessed benefits of the Missouri Pacific Railroad were $1,960.00, whereas the levy of the tax on that property, according to the "assessed value for county and State taxation", would amount to $2,396.62. The board of assessors had assessed the property of the St. Louis-San Francisco Railway Company at $2,341.50, and it is shown that the amount to be paid on a levy in accordance with the provisions of the statute would be $2,769.40."

It was contended by the Missouri Pacific Railroad Company and the St. Louis-San Francisco Railway Company in the Supreme Court of Arkansas that the provision of said section of the Act creating the said Road Improvement District to pay preliminary expenses was arbitrary, unreasonable, unconstitutional and void and in violation of Section 1 of the Fourteenth Amendment to the constitution of the United States, which provides:

"Nor shall any State deprive any person of life, liberty or property without due process of law."

And also in violation of the Fifth amendment to the Constitution of the United States which provides:

"Nor shall private property be taken for public use without just compensation."

That under the provisions of said Section of the Act creating said district the plaintiffs in error would be required to pay more as their proportionate part of the preliminary expenses than they would have [fol. 78] been forced to pay as benefits if the improvements contemplated by said Act had been completed; that the plaintiffs in error, appellants below, raised the same question in their position for rehearing in the Supreme Court of Arkansas, which was filed within apt time and which was overruled by the Supreme Court of Arkansas on the 26th day of March, 1923; that the application of the provisions of said Section of said Act would deprive them of its property without due process of law in violation of said provision of the Constitution of the United States; that the Supreme Court further in reversing the Chancery Court of Crawford County in its opinion said:

"The Chancery court erred, therefore, in refusing to follow the statute, and the decree is reversed and the cause remanded with directions to enter a decree levying taxes on the property in the district in accordance with the terms of the statute; that is to say, "upon the assessed value for county and State purposes."

Wherefore, your petitioners pray that a writ of error from the Supreme Court of the United States may be issued in the case to the Supreme Court of the State of Arkansas for the correction of the error so complained of and that the transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of Arkansas, may be sent to the Supreme Court of the United States, as provided by law.

Dated Little Rock, Arkansas, April 18th, 1923.

Missouri Pacific Railroad Company, By Thos B. Pryor, Its Attorney. St. Louis-San Fransico Railway Company, By Warner, Hardin & Warner, Its Attorneys, Petitioners and and Plaintiffs in Error.

[fol. 79] Let the writ issue upon the execution of separate bonds in the sum of $3,000.00 by each of the petitioners, which is to be a supersedeas.

E. A. McCulloch, Chief Justice of the Supreme Court of the State of Arkansas.

[File endorsement omitted.]

[fol. 80] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

BOND OF MO. PAC. R. R. CO. ON WRIT OF ERROR (FOR $3,000.00; APPROVED, MCCULLOCH, C. J.); Filed Apr. 23, 1923; (omitted in printing)

[File endorsement omitted.]

[fol. 81] (Copy)

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

BOND OF ST. L.-SAN F. RY. CO. ON WRIT OF ERROR (FOR $3,000; APPROVED, MCCULLOCH, J.; filed Apr. 23, 1923; (omitted in printing).

[File endorsement omitted.]

[fol. 82] WRIT OF ERROR—Filed Apr. 26, 1923.

UNITED STATES OF AMERICA *ss:*

The President of the United States of America to the Honorable the Judge of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Missouri Pacific Railroad Company and St. Louis-San Francisco Railway Company, and Western Crawford Road Improvement District, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened, to the great damage of the said Missouri Pacific Railroad Company and St. Louis-San Francisco Railway Company, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, so command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to [fol. 83] the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of ıe United States, the 26 day of April, the year of our Lord One housand Nine Hundred and Twenty-three.

Sid B. Redding, Clerk United States District Court for Western Division of Eastern District of Arkansas, By W. P. Feild, D. C.

Allowed: April 26, 1923. E. A. McCulloch, Chief Justice Sureme Court of Arkansas.

[File endorsement omitted.]

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fol. 84] STATE OF ARKANSAS, *ss:*

SUPREME COURT

CERTIFICATE OF LODGMENT

I, W. P. Sadler, Clerk of the said Court, do hereby certify that here was lodged with me as such clerk on the dates indicated on each paper, in the matter of the Missouri Pacific Railroad Company, a corporation, and St. Louis-San Francisco Railway Company, a corporaion, versus Western Crawford Road Improvement District,

1. The original bonds, of which copies are herein set forth.

2. Original and copy of the Writ of Error, as herein set forth.

In testimony whereof, I have hereunto set my hand and affixed he seal of said court at my office, in Little Rock, Arkansas, this 7th lay of May, 1923.

W. P. Sadler, Clerk Supreme Court of Arkansas. (Seal of the Supreme Court of Arkansas.)

[fol. 85] CITATION AND SERVICE

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Western Crawford Road Improvement District of Crawford County, E. R. McRae, W. A. Steele, and R. S. Wilson, Commissioners, and C. M. Bledsoe, Tax Collector of Crawford County, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within 30 days from the date hereof, pursuant to writ of error filed in the office of the Clerk of the Supreme Court of the State of Arkansas, wherein the Missouri Pacific Railroad Company, a corporation,

and St. Louis-San Francisco Railway Company, a corporation, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Arkansas, this 26 day of April, 1923.

E. A. McCulloch, Chief Justice Supreme Court of Arkansas.
Attest: W. P. Sadler, Clerk of Supreme Court of Arkansas.
By C. R. Stevenson, D. C.

Copy of the above citation received and service thereof waived this 3rd day of May, 1923.

E. L. Matlock.

[fol. 86] UNITED STATES OF AMERICA, *ss:*

SUPREME COURT OF ARKANSAS

RETURN TO WRIT OF ERROR

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Arkansas, in the City of Little Rock, this May 7th, 1923.

W. P. Sadler, Clerk Supreme Court of Arkansas. (Seal of the Supreme Court of Arkansas.)

Costs of Suit

Costs pursuant to Writ of Error, $25.15. Paid by Plaintiffs in Error.

Endorsed on cover: File No. 29,624. Arkansas Supreme Court. Term No. 332. Missouri Pacific Railroad Company and St. Louis-San Francisco Railway Company, plaintiffs in error, vs. Western Crawford Road Improvement District. Filed May 17th, 1923. File No. 29,624.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

MISSOURI PACIFIC RAILROAD COMPANY AND ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,
Plaintiffs in Error

vs. No. 332

WESTERN CRAWFORD ROAD IMPROVEMENT DISTRICT,
Defendant in Error.

STATEMENT

This case is pending on writ of error granted by the Chief Justice of the Supreme Court of Arkansas.

The facts are stated in the opinion of the Supreme Court of Arkansas as follows:

> "A road improvement district designated as Western Crawford Road Improvement District was created in Crawford County by special statute (unpublished) at the extraordinary session of the year 1920, and there were proceedings under the statute up to the assessment of benefits by the assessors and the filing of the list of assessments with the clerk of the county court for approval by the board of commissioners. The statute contained the usual provisions with reference to giving notice of the assessments and providing for a hearing upon the correctness of the assessments.
>
> "On the day provided for the hearing there were numerous protests made by the owners of property to further proceedings toward the construction of the improvement on the ground that the improvement was

too expensive and that the cost would probably exceed the benefits, and the commissioners, without acting upon the list of assessments filed by the assessors, decided to abandon the whole project as being impracticable. There were no further proceedings toward carrying out the construction of the improvement, but there had been preliminary expenses incurred, and the statute contained the following provision with reference to the payment of such expenses:

"'Section 25. In case, for any reason, the improvement contemplated by this district is not made, the preliminary expense shall be a first lien upon all of the lands in the district, and shall be paid by a levy of a tax thereon upon the assessed value for county and State (fol. 60) taxation, which levy shall be made by the chancery court of Crawford County, and shall be collected by a receiver to be appointed by said court.'

"The commissioners of the district, pursuant to the provisions of that part of the statute quoted above, prepared an itemized statement or list of the preliminary expenses and filed a petition in the Chancery Court of Crawford County, setting forth in detail all the proceedings in connection with the preliminary expenses incurred and asked the court to levy a tax upon the property in the district to raise funds for the payment of such expenses. The court disallowed one of the claims, but no appeal has been prosecuted from that part of the decree. The remainder of the claims were approved by the chancery court and ordered paid, but in the final decree rendered the court refused to order payment of assessments in accordance with the directions of the statute quoted above, but ordered that the payments be made in proportion to the anticipated benefits assessed by the board of assessors.

"It appeared from the proof that the property of two railroad corporations whose lines of railroad ran through the district would, under the method of

assessment prescribed by the statute, amount to more than the whole of the anticipated benefits as assessed by the assessors of the district. It is shown that the assessed benefits of the Missouri Pacific Railroad were $1,960, whereas the levy of the tax on that property, according to the "assessed value for county and State taxation" would amount to $2,396.62. The board of assessors had assessed the property of the St. Louis-San Francisco Railway (fol. 61) Company at $2,351.50, and it is shown that the amount to be paid on a levy in accordance with the provisions of the statute would be $2,769.40.

"The chancery court based its conclusion on the ground that the assessment made by the board of assessors was conclusive as to the amount of anticipated benefits from the construction of the improvement and that the owners of property could not be taxed for preliminary expenses in excess of the anticipated benefits." (R. 32-33.)

Section 5 of the Act of the Legislature provides:

"It is hereby ascertained and declared that all land within the district will be benefited at least to the extent of the cost of the improvements, and that the amount of the benefits to each tract of land will be ascertained by an assessment of benefits to be made by the Board of Assessors hereinafter appointed.

"The Board of Commissioners shall appoint a board of three assessors, who shall be land owners of Crawford County, and who shall proceed to assess the lands within the district and shall inscribe in a book each tract of land and shall assess the value of the benefits to accrue to each tract by reason of such improvement, and shall enter such assessment of benefits opposite the description, together with the estimate of the probable cost to the land owner. Their assessment shall embrace not merely the lands, but all railroads, tramroads, telegraph, telephone and pipe lines, and

other improvements on real estate that will be benefited by the improving of the roads; and wherever the word "lands" or "real property" is used in this Act, it shall be construed to embrace all property subject to taxation herein. The assessors shall place opposite each tract the name of the supposed owner as shown by the last county assessment; but a mistake in the name shall not vitiate the assessments, and they shall correct errors which occur in the county assessment list. The assessors shall also assess all damages that will accrue to any land owner by reason of the proposed improvement, including all injury to lands taken or damaged; and where they return no such damages as to any tract of land, it shall be deemed a finding by them that no damages will be sustained."

Section 6 provides:

"A copy of the assessment shall be filed with the county clerk of Crawford County, and the secretary of the board shall thereupon give notice of its filing by publication for two weeks in a newspaper published and having a bona fide circulation in Crawford County. This notice may be in the following form:

'WESTERN CRAWFORD ROAD IMPROVEMENT DISTRICT

'Notice is hereby given that the assessment of benefits and damages of the above district has been filed in the office of the county clerk of Crawford County, where it is open to inspection.

'All persons wishing to be heard on said assessment will be heard by the commissioners of said district at the Circuit Court room in the City of Van Buren, Arkansas, on the——day of————————, 19—.

_____

Secretary.'

"On the day named in said notice, it shall be the duty of the commissioners to meet at the place named,

and to hear all complaints against said assessment and to equalize and adjust the same, and their determination shall be final, unless suit is brought in the chancery court within thirty days to review it."

Section 10 provides:

"The Board of Commissioners of the district shall at the same time that the assessment of benefits is filed, or at any subsequent time, enter upon its records an order, which shall have all the force of a judgment, providing that there shall be assessed upon the real property of the district a tax sufficient to pay the estimated cost of the improvement, with ten per cent added for unforeseen contingencies, which tax is to be paid by the real property in the district, in the proportion to the amount of the assessment of benefits thereon, and which is to be paid in annual installments, payable not to exceed ten per cent for any one year, as provided in such order. The tax so levied shall be a lien upon all the real property in the district from the time that the same is levied, and shall be entitled to preference over all demands, excutions, encumbrances or liens whensoever created, and shall continue until such assessment, with any penalty and costs that may accrue thereon, shall have been paid. The remedy against such levy of taxes shall be by suit in chancery, and then such suit must be brought within thirty days from the time that said levy has been certified to the county clerk, and on such appeal the presumption shall be in favor of the legality of the tax."

ASSIGNMENT OF ERRORS

I.

That the Supreme Court of Arkansas erred in holding that Section 25 of the Act of the Legislature creating Western Crawford Road Improvement District which provided:

"In case, for any reason, the improvement con-

templated by this district is not made, the preliminary expense shall be a first lien upon all of the lands in the district, and shall be paid by a levy of a tax thereon upon the assessed value for the county and State taxation, which levy shall be made by the Chancery Court of Crawford County and shall be collected by a receiver to be appointed by said court";

should be applied, when according to the undisputed evidence the tax levied upon said basis would exceed the assessment of benefits made against the property by the Board of Assessors if the improvement contemplated by the Act had been completed, thereby depriving plaintiffs in error of their property without due process of law and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides:

"Nor shall any State deprive any person of life, liberty or property without due process of law."

And also in violation of the Fifth amendment to the Constitution of the United States which provides:

"Nor shall private property be taken for public use without just compensation."

II.

That the Supreme Court of Arkansas erred in holding and deciding that the Missouri Pacific Railroad Company should pay as a tax for the purpose of paying the preliminary expense incurred in said improvement district, the amount of $2,396.62, when the assessed benefits against the property of said railroad in said district, as made by the Board of Assessors as provided by said Act of the Legislature creating said district, only amounted to the sum of $1,960.00, and in deciding that the St. Louis-San Francisco Railway Company should pay $2,769.40 in payment of its portion of the preliminary expenses in said district, when the assessment of benefits made against its property only amounted to the sum of $2,341.50.

III.

That the Supreme Court of Arkansas erred in holding and deciding that the assessment of benefits as made by the Board of Assessors should not be considered and treated as the assessment of benefits against the property of the plaintiffs in error herein, as said assessment had not been approved by the Board of Commissioners as provided by said Act, when there was no evidence in the record tending to show that the Board of Commissioners would not have approved said assessment as made by the said Board of Assessors. (R. 39-40.)

BRIEF

The facts in this case are undisputed. The St. Louis-San Francisco Railway Company was assessed by the Board of Assessors benefits to pay for building the road proposed amounting to the sum of $2,351.50, and the Missouri Pacific Railroad Company was assessed $1,960.00. These amounts would have been spread over a period of not less than ten years, nor more than thirty years, and, under the terms of the Act, would have been paid in annual installments.

The Supreme Court of Arkansas, reversing the Chancery Court of Crawford County, held that the preliminary expenses incurred by this District should be paid by the levy of a tax upon the assessed value of the property for County and State taxation, as provided by Section 25 of the Act. According to this decision, the St. Louis-San Francisco Railway Company would be required to pay in cash $2,769.40 and the Missouri Pacific Railroad Company would be required to pay $2,396.62.

Under the decision of a majority of the Supreme Court of Arkansas the amounts the plaintiffs in error are required to pay for preliminary expenses exceed the amounts they would have paid for the completed project. The pro-

visions of Section 25 of the Act in question are held to constitute a legislative determination that the cost of the preliminary expenses would not exceed the anticipated benefits from the construction of the improvement.

Assessments for local improvements in Arkansas can be sustained only when the benefits equal the assessments. The benefits represent the enhancement in value in the property produced by the construction of the improvement.

Rector v. Board of Improvement, 50 Ark. 116.

Kirst v. Street Improvement District, 86 Ark. 1.

Board of Improvement v. Pollard, 98 Ark. 543.

Kansas City P. & G. R. Co. v. Water Works Improvement District, 68 Ark. 376.

In Kirst v. Street Improvement District, *supra*, the Supreme Court of Arkansas held:

> "Special assessments for local improvements find their only justification in the peculiar and special benefits which such improvements bestow upon the particular property assessed. Any exaction in excess of the special benefits is, to the extent of such excess, a taking of property without compensation."

This Court in the case of Norwood v. Baker, 172 U. S. 269, said:

> "The benefits must be special and peculiar, and if the exaction from the owner is in excess of the special benefit it is a taking of private property, in the guise of taxation, for public use without compensation, and if the assessment is of more than the 'acceptive' benefit, the assessment is void."

In Myles Salt Co. v. Iberia Drainage District, 239 U. S., 478, it was held that power arbitrarily exerted, imposing a burden without a compensating advantage of any kind, amounts to confiscation and violates the due process clause

f the Fourteenth Amendment; that such a result is accomplished by the action of a local administrative body n including land within a drainage district which is palably arbitrary, such inclusion not being for the purpose f benefitting such land directly but for the purpose of btaining revenue therefrom. The Court said:

> "We are not dealing with motives alone, but as well with their resultant action; we are not dealing with disputable grounds of discretion or disputable degrees of benefits, but with an exercise of power determined by consideration not of the improvement of plaintiff's property but solely of the improvement of the property of others—power, therefore arbitrarily exerted, imposing a burden without a compensating advantage of any kind."

And in Gast Realty & I. Co. v. Schneider Granite Company, 240 U. S. 55, it was held that a State Legislature may reate taxing districts to provide for the expense of local mprovements, without violating the Fourteenth Amendnent, unless its action is palpably arbitrary or a plain buse. The Court said:

> "The legislature may create taxing districts to meet the expense of local improvements, and may fix the basis of taxation without encountering the Fourteenth Amendment unless its action is palpably arbitrary or a plain abuse."

In the opinion of the Supreme Court of Arkansas in he case at bar, it was said:

> "Counsel for appellees lay stress upon the statement in the opinion in the Neterer case to the effect that the payment of preliminary expenses must not exceed the anticipated benefits, but this was a mere reiteration of what we have held in other cases in regard to taxation upon property and was a mere statement of the principle without undertaking to deter-

mine how it might be shown that the taxes exceeded those benefits. We have always adhered to the principle that the right to tax for local improvements is limited to the amount of anticipated benefits, but, at the same time, we have consistently held that the legislative determination of the amount of benefits, or the legislative provision for the method of determining benefits was conclusive unless shown to be arbitrary. So we hold now that this legislative determination is conclusive, and it is not sufficient to overcome this by showing that an incomplete assessment of benefits made by the board of assessors was less than the amount of taxes that the appellees would be required to pay under the other method prescribed by the statute." (R. 34.)

The conclusion reached by the Court that the assessment of benefits as made by the Board of Assessors was not final and complete is not, as we believe, warranted by the terms of the Act creating said Road Improvement District. Section 6 of the Act, in effect, provides that the assessment made by the Board of Assessors shall be final and conclusive, unless a complaint is filed by the tax payer with the Board of Commissioners and then the Board of Commissioners had the right "to equalize and adjust the same, and their determination shall be final."

The record does not show that objection was made to the assessments of benefits against the property of the plaintiffs in error, and, in the absence of such objection on the part of plaintiffs in error, the assessment as determined by the Board of Assessors became final.

It appears from the record that the Assessors, who were appointed and qualified to assess the benefits to accrue to the property in this district from the construction of the improvement, determined that the property of each of the plaintiffs in error would be benefited in the sums stated

above. It is true that the Board of Commissioners for the District decided that the project should be abandoned without hearing objections to assessments made by the Board of Assessors, but it certainly does not appear that objection was made to the assessments extended against the property of the plaintiffs in error, or that objection thereto would be made.

Under the plain terms of the Act, in the absence of objections, there was nothing for the Board of Commissioners to do with respect to the assessment of benefits so made against the property of the plaintiffs in error. The action of the Board of Assessors in making the assessment of the benefits has never been questioned by the Board of Commissioners, or the plaintiffs in error.

This Court, in Corn Products Refining Company v. Eddy, 249 U. S., 427, held:

> "In reviewing the judgment of a state court in a case in which it was unsuccessfully contended that a state law deprived a party of rights secured by the Federal Constitution, the Federal Supreme Court is concerned not with the characterization of construction of the State law by the State court, nor even with the question whether it has in terms been construed, but solely with the effect and operation of the law as put in force by the state."

It is submitted that the facts disclosed by the record show that the provisions of Section 25 of the Act creating this district are arbitrary, unjust and confiscatory and that they encounter the Fourteenth Amendment to the Constitution of the United States.

The record in this case presents the anomalous situation: The plaintiffs in error are required to pay in cash more for preliminary expenses than they would have been required to pay in annual installments covering a period of at least ten years if the improvement contemplated by

the Act of the Legislature creating the District had been completed.

We respectfully submit that the judgment of the Supreme Court of Arkansas herein should be reversed.

Respectfully submitted,

W. F. EVANS,
H. P. WARNER,
Attorneys for St. Louis-San Francisco Railway Company.

EDWARD J. WHITE,
THOMAS B. PRYOR,
Attorneys for Missouri Pacific Railroad Company.

FEB 2 8 1924

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

MISSOURI PACIFIC RAILROAD COMPANY AND ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY
Plaintiffs in Error

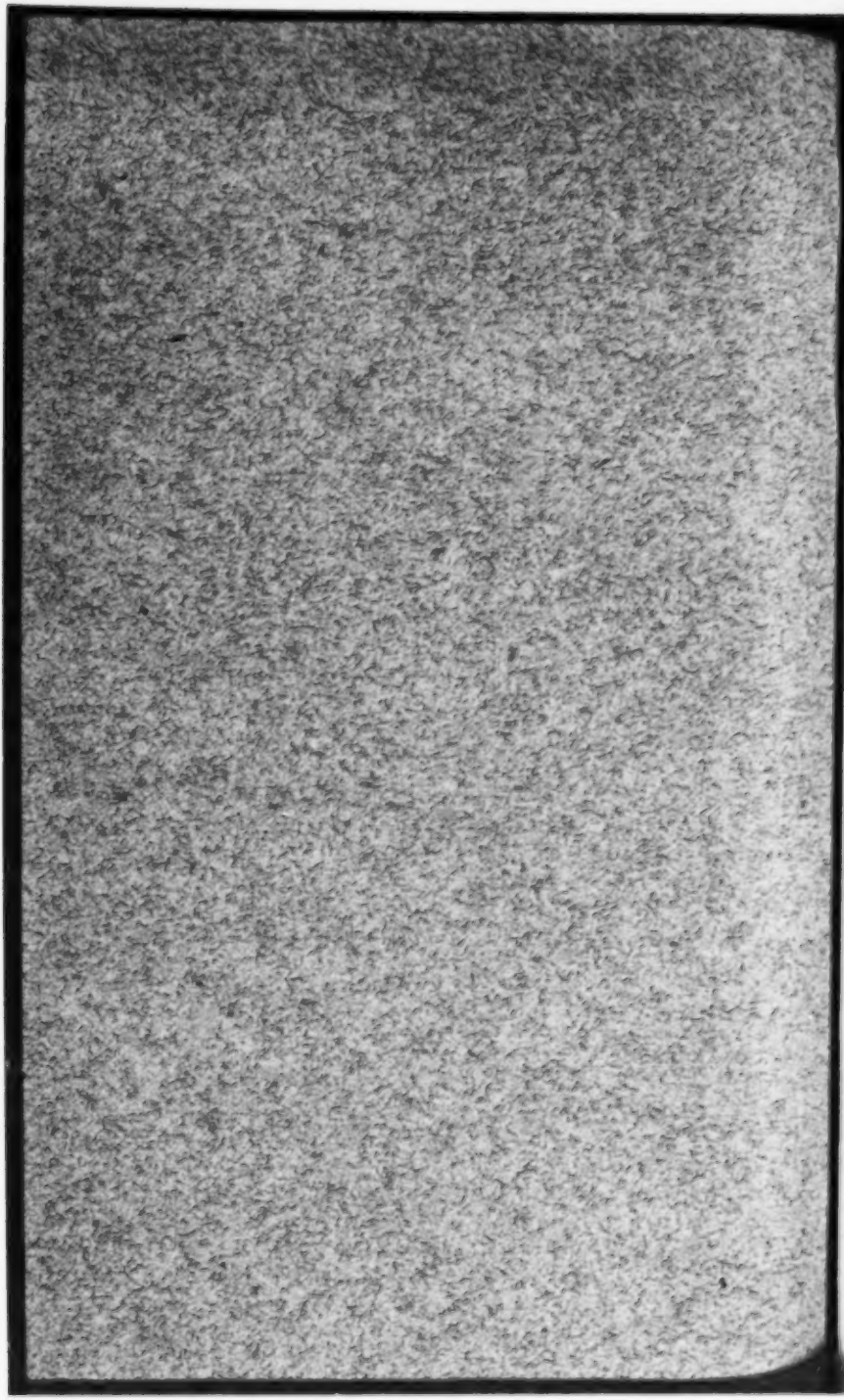
Vs. No.

WESTERN CRAWFORD ROAD IMPROVEMENT DISTRICT
Defendant in Error

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

BRIEF OF DEFENDANT IN ERROR

E. L. MATLOCK,
Attorney For Defendant in Error.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

MISSOURI PACIFIC RAILROAD COMPANY AND ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY
Plaintiffs in Error

Vs. No. 332

WESTERN CRAWFORD ROAD IMPROVEMENT DISTRICT
Defendant in Error

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

BRIEF OF DEFENDANT IN ERROR

E. L. MATLOCK,
Attorney For Defendant in Error.

STATEMENT OF DEFENDANT IN ERROR

It is contended by the defendant in error that the Arkansas Legislature in passing the Act creating the Western Crawford Road Improvement District ascertained and determined that the real property, including railroads, in the district would be benefited by the construction of improved public roads in the district, as shown by Section 5 of the Act.

That expenses preliminary to the construction of the roads would be incurred by the district and in Section 25 of the Act provides that, "In case for any reason, the improvement contemplated by the district is not made, the preliminary expenses shall be a first lien upon all of the lands in the district and shall be paid by a levy of the tax thereon upon the assessed value for County and State taxation."

That the assessment of benefits made in the district preliminary to the construction of the roads never become finally fixed, but was cancelled and set aside by the Board of Commissioners of the district on the day the same came up for hearing because of objections and protests made by the property owners in the district, including plaintiffs in error, against the improvement.

That the Arkansas Legislature in creating the district ascertained and determined that if the road improvements were abandoned for any reason then the preliminary expenses already incurred should be apportioned, levied and collected upon a basis of the assessment of the property in the district made for the purpose of State and County general taxation, and the effect of Section 25 of the Act is to set aside any assessment of benefits which may have previously been made in contemplation of the road improvement.

BRIEF

It was competent for the Arkansas Legislature in creating the Road District to provide a benefit assessment to be made against the taxable property in the district to pay the cost of building improved roads therein, and to further provide that in the event for any reason the roads were not constructed the preliminary expenses should be levied and collected on a basis of the assessed valuation of the property for general taxation.

In Webster v.Fargo, 181 U. S. 394, this Court held:

> "It is within the power of the Legislature of a State to create special taxing districts, and to charge the cost of local improvements in whole or in part, upon the property in said district, either according to valuation, or superficial area or frontage."

The above cited decision of this Court followed soon after the case of Norwood v. Baker, 172 U. S. 269 which this Court declined thereafter to follow. The decision of this Court in French v. Barber Asphalt Company, 181 U. S. 325, is to the same effect as Webster v. Fargo, supra. In fact, we could cite a number of decisions of this Court following the rule announced in Webster v. Fargo, supra, but we deem it useless as the rule there announced is so well settled that it is no longer questioned.

The Legislature of Arkansas provided two methods of assessment in the Western Crawford Road Improvement District; one a benefit assessment from which the money should be raised for the purpose of paying the cost of the completed road improvement, the other a provision for the payment of preliminary expenses in the event the improvement was not undertaken. The Supreme Court of Arkansas in discussing this case said:

> "The two methods of assessment are for wholly different purposes. One is for the payment of the cost of the completed improvement, which must be by taxation based upon and apportioned on benefits to accrue. The other is a mere provision for the payment of preliminary expenses where the improvement is not undertaken at all. This provision necessarily implies a determination by the legislature that there are anticipated bene-

fits, at least to the extent of the cost of the preliminary expenses, apportioned according to assessments for county purposes, but it is neither unfair nor violative of any right of landowners to provide that, in the event the contemplated imrpovement is not undertaken, the preliminary expenses shall be paid according to value, and not according to anticipated benefits. The distinction lies between the payment of preliminary expenses and payment of the actual cost of the improvement."

In view of our contention that Section 25 of the Act abolishes any assessment of benefits which had previously been made; in the event that the road improvement is abandoned, we respectfully insist that the valuation of the property in the district made for the purpose of State and County general taxation is a just and equitable basis upon which to levy the preliminary expenses already incurred in the district as it cannot be said that one property owner is benefited more or less in proportion than another property owner by reason of the fact that the road improvements were not made.

Counsel for plaintiffs in error urge upon the Court the fact that the amount of the preliminary expenses of the road district charged to the two railroads is greater than the benefit which was estimated to accrue to them if the road improvements had been made, and insist upon a reversal of the decision of the Arkansas Court for that reason. In discussing that contention the Supreme Court of Arkansas said: "The assessment was not complete because it was never approved by the Board of Commissioners. The point was never reached for the approval, for there was an abandonment of the district before this was done, and we do not certainly know what the assessments against the railroads would have been had the assessment of benefits proceeded to finality."

At the time the road improvement was bandoned the benefit assessment amounted merely to an estimate of the benefits which would accrue to the property in the district and the same had not been finally fixed and no tax for the construction of the road improvement had been levied upon the property in the district on a basis of the benefits estimated to accrue by the assessment.

It is insisted by counsel for plaintiffs in error that the plan of apportionment of the preliminary expenses in the road district by Section 25 of the Act creating the same is in conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides: "Nor shall any state deprive any person of life, liberty or property without due process of law." And was in violation of the Fifth Amendment to the Constitution of the United States which provides: "Nor shall private property be taken for public use without just compensation."

We respectfully submit that Section 25 of the Act is not in conflict with the above provisions of the Constitution of the United States.

Section 5 of the Act creating the road district expressly ascertained and declared that all land within the district would be benefited at least to the extent of the cost of the improvements, which was a legislaive determination that the property of the plaintiffs in error would be benefited by the road improvement. The Act also provided a hearing for the property owners upon the apportionment of the costs of the improvement and at that hearing the plaintiffs in error appeared and participated and instead of complaining that their assessment was incorrect they insisted upon an abandonment of the project. They had their "day in Court" and attained their desire—the abandonment of the road improvement. It is well settled that where an

Act creating a local improvement district provides a tribunal for the hearing of complaints of property owners in the district that such Act is not in conflict with the "due process" provision of the Constitution of the United States. The plaintiffs in error knew that preliminary expenses had already been incurred by the District when they sought the abandonment of the road improvement, and they are held to knowledge of the provision of the Act for the payment of the preliminary expenses of the district.

It is useless for us to cite the numerous decisions of the Arkansas Court, and of this Court, upholding Acts of the Legislature in creating local improvement districts, and for the dissolution of the same, and we will not attempt to cite the decisions establishing the well settled rule.

The decision of the Arkansas Court upholding the plan of apportionment of the preliminary expense of the defendant in error road district is a construction of that Court given to a statute of that state and we respectfully submit that the construction of the Arkansas Court of the statute of its own state ought to be upheld by this Court and that the decision of the Arkansas Court is correct and should be affirmed by this Court.

Respectfully submitted,

E. L. MATLOCK,
Attorney for Defendant in Error.

MISSOURI PACIFIC RAILROAD COMPANY ET AL. *v.* WESTERN CRAWFORD ROAD IMPROVEMENT DISTRICT.

ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

No. 67. Submitted October 10, 1924.—Decided November 17, 1924.

1. Where a special road improvement is abandoned after preliminary publication and inquiry because the cost would probably exceed the benefits to the lands included in the improvement district, the State may defray the expenses of the inquiry by assessing the lands according to their values as assessed for purposes of county and state taxation. P. 188.
2. The fact that an assessment so made exceeded the amount of the anticipated benefit to the same property, as officially estimated in the preliminary proceedings, did not render the assessment obnoxious to the Fourteenth Amendment, there being no suggestion of flagrant abuse or purely arbitrary exercise of the taxing power. P. 190.

157 Ark. 304, affirmed.

ERROR to a judgment of the Supreme Court of Arkansas sustaining a decree for a tax levy as originally entered by the Chancery Court of Crawford County, reversing a subsequent decree of that court by which the levy was changed.

Mr. Harry P. Warner, Mr. Thomas B. Pryor, Mr. W. F. Evans and *Mr. Edward J. White* for plaintiffs in error.

Mr. E. L. Matlock for defendant in error.

Mr. JUSTICE BRANDEIS delivered the opinion of the Court.

In 1920 Arkansas created the Western Crawford Road Improvement District by a special act. Pursuant to its provisions the commissioners named therein took the

proceedings incident to organizing the district. They determined what work would be required, estimated the cost thereof, and had the preliminary assessment made of the benefits and burdens. In so doing the commissioners necessarily incurred expenses for publication of notices, for the services of engineers, lawyers and assessors, and for other matters. After the required data had been obtained, it was concluded that the cost of the proposed improvement would probably exceed the benfits; and the project was duly abandoned. The aggregate preliminary expense was $20,611.80. The special act had provided:

"Section 25. In case, for any reason, the improvement contemplated by this district is not made, the preliminary expense shall be a first lien upon all of the lands in the district, and shall be paid by a levy of a tax thereon upon the assessed value for county and State taxation, which levy shall be made by the chancery court of Crawford County and shall be collected by a receiver to be appointed by said court."

For the purpose of paying the preliminary expense the commissioners applied to the appropriate court for a tax levy. A decree was entered for a levy of 1.65 per cent. on the assessed value of the land in the district subject to taxation. Thereupon, the Missouri Pacific Railroad Company [1] brought, in the same court, this suit to restrain enforcement of the decree. The aggregate assessed value of property within the district was $1,453,938. The assessed value of the Missouri Pacific property was $145,250. The tax assessed against its property to defray the preliminary expense was $2,396.62. The board of as-

[1] The St. Louis-San Francisco Railway Company joined as co-plaintiff. Its situation, being in all respects like that of the Missouri Pacific, does not require discussion.

sessors appointed under the special act estimated the amount of the anticipated benefit at $1,960. The sole objection of the railroad was that the tax to defray the preliminary expense was distributed in proportion to the assessed value of the property, instead of in proportion to the amount of the benefit thereto which it was estimated would accrue if the improvement was made. It argued that the smaller sum would, under both the State and the Federal Constitution, have been the limit of its assessment for the improvement if carried out; that it could not be taxed more for the preliminary expense of a projected improvement which had been abandoned; and that, therefore, § 25 violated the due process clause of the Fourteenth Amendment. The Supreme Court of Arkansas sustained the decree for a levy as originally entered. 157 Ark. 304. That judgment is here on writ of error.

The state court held that the provision in § 25 for payment of preliminary expenses necessarily implied a legislative determination that the cost of the preliminary expenses would not exceed the anticipated benefits of the construction of the improvement; that this legislative determination is conclusive unless shown to be arbitrary and unreasonable; that nothing was shown to overcome the legislative determination except the unapproved assessment lists filed by the board of assessors; that the assessment was incomplete because it was never approved by the board of commissioners; and that, since the abandonment of the project relieved them from the duty of considering its correctness, the court cannot know what the assessment against the railroad would have been, had the assessment of benefits been proceeded with. The lower court held, therefore, that the tax laid was not obnoxious either to the state constitution or to that of the United States.

So far as concerns the Federal Constitution, the validity of the tax may be rested, also, on other grounds. A State may defray the cost of constructing a highway, in whole or in part, by means of a special assessment upon property specially benefited thereby. But it is not obliged to do so. Road building is a public purpose which may be effected by general taxation. The cost may be defrayed out of state funds; or a tax district may be created to meet the authorized outlay. The preliminary enquiry whether it is desirable to construct the road, is one in which all landowners within the district are interested. The Fourteenth Amendment does not require that taxes laid for this purpose shall be according to the benefits to be received by the person or thing taxed. Compare *Kelly* v. *Pittsburgh*, 104 U. S. 78. The cost of making the investigation may be met by a fixed charge per acre, as in *Houck* v. *Little River Drainage District*, 239 U. S. 254, and *Miller & Lux* v. *Sacramento & San Joaquin Drainage District*, 256 U. S. 129, or by distributing the cost over all the land in the district in proportion to its value as assessed for county and state taxation, or otherwise. The fact that the money to be raised by this tax will be applied toward defraying the expenses of an abandoned road project, and not to the cost of a road wholly or partly completed, is obviously immaterial. *Houck* v. *Little River Drainage District*, *supra*, p. 265.

There is here no suggestion of that flagrant abuse or purely arbitrary exercise of the taxing power against which the Federal Constitution affords protection. *Valley Farms Co.* v. *Westchester*, 261 U. S. 155, 163; *Thomas* v. *Kansas City Southern Ry. Co.*, 261 U. S. 481, 483.

Affirmed.